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Managing Seized and Confiscated Assets

A Guide for Practitioners

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Stolen Asset Recovery Initiative
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United Nations Office on Drugs and Crime

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StAR—the Stolen Asset Recovery Initiative—is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.

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Stolen Asset Recovery (StAR) Series

The Stolen Asset Recovery Initiative (StAR) is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets. For more information, visit <https://star.worldbank.org/>.

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Overview of Policy Recommendations

Asset recovery seeks to deprive corrupt individuals from benefiting from their crimes, deter future corruption, and return stolen assets to their rightful owners or compensate victims of corruption, including the state. Since 2010, close to US\$10 billion in corruption proceeds have been frozen, restrained, confiscated in a destination country, or returned to a country that was harmed by corruption. However, without effective management of the seized and confiscated assets, there may be little to show for these efforts. Although corrupt officials may have been deprived of the benefit of the stolen assets, diminished or negligible value from the disposal of confiscated stolen assets deprives society once again of the assets' productive use. This *Guide* continues the evolution of the fight against corruption with a focus on preserving the value of seized assets and maximizing the value at disposal of confiscated assets.

The management of seized assets is a challenge, as they may lose value from the moment of seizure until their disposal following the final confiscation decision. This *Guide* aims to provide guidance to practitioners on asset management, from pre-seizure planning to preserving value during custody to maximizing value at disposal. Through effective management, confiscated assets can be used to benefit national country budgets, compensate victims, or be repurposed for social causes. Provided below are an overview and key recommendations presented in the *Guide* to assist policy makers in developing an effective asset management system in their jurisdictions.

Legal Avenues for Asset Confiscation

There are diverse legal avenues for pursuing asset recovery, including domestic criminal prosecution and confiscation; domestic non-conviction based (NCB) confiscation; criminal prosecution and confiscation or NCB confiscation initiated by a foreign jurisdiction; private civil actions, including formal insolvency proceedings; and administrative confiscation. The availability of these avenues will depend on the laws and regulations in the jurisdictions involved and on international or bilateral conventions and treaties. In practice, criminal confiscation and NCB confiscation are the most frequently used measures.

In each of these avenues, provisional measures may be applied to prevent the dissipation, concealment, or transfer of the asset prior to a confiscation order. The enforcement of the order depends on whether the order is property- or value-based, or both. In a value-based confiscation system, the confiscation order directs the defendant to pay to the government an amount of money, either equal to the value of all benefits derived from the offense or of an asset of value equivalent to the instrument or of proceeds directly involved in the crime.

Most jurisdictions apply a form of property-based confiscation wherein the confiscation order directs the transfer of ownership of a specified asset to the government. After the confiscation order is issued, the asset can either (a) be retained in the form in which it was seized pending an allocation decision or (b) be sold, with the proceeds retained by or on behalf of the state.

Enforcement of Confiscation Orders

Enforcing domestic confiscation orders can be challenging, especially when trying to do so across borders. However, having a competent and efficient domestic asset management function can significantly improve domestic asset recovery and the return of proceeds from abroad. In some jurisdictions, the responsibility for disposing of confiscated assets may lie with the prosecuting or law enforcement authority that obtained the order, or with the fiscal authorities responsible for collecting debts owed to the state. The enforcement process can be complicated and costly if the only available mechanism is civil debt recovery proceedings.

Unfortunately, there is often a significant discrepancy between the value of confiscation orders made and the value of orders that are actually satisfied. This means that in some cases, confiscation orders are made but there is not enough property seized or identified during the criminal investigation to satisfy the orders. Additionally, confiscation orders may remain unenforced because of capacity or resource constraints, lack of initiative to trace and identify assets internationally, inability to trace assets after a conviction, and emergence of third parties asserting title claims to the assets.

These unsatisfied confiscation orders can generate negative publicity for the asset recovery program and undermine the rule of law, particularly in jurisdictions in which corruption is perceived to be widespread. The Financial Action Task Force recognizes the importance of realizing confiscation orders in determining a jurisdiction's effectiveness in confiscating the proceeds and instrumentalities of crime.

Recommendations:

- **Collect statistics to monitor the enforcement of confiscation orders to assess the effectiveness of a jurisdiction's asset recovery program.**

- **Consider the use of special realization mechanisms, such as civil law enforcement or debt-collection procedures, to enforce confiscation orders. Ensure that the asset management office has investigative powers post-confiscation to obtain information on the financial position of the defendant subject to the confiscation order.**

Establishing an Asset Management Function

Asset management systems vary across jurisdictions, but effective systems share common foundations and principles:

1. **Legal foundation:** An effective asset management system requires an appropriate legislative framework and regulations that enable efficient, transparent, and flexible asset management. The framework should provide for the protection of the rights of bona fide third parties in the context of asset recovery measures.
2. **Defined institutional arrangements:** A dedicated agency or office responsible for the management and disposal of seized and confiscated assets should be established, with the necessary skills, capacities, and resources to carry out its functions effectively.
3. **Continuity and adequate financing:** An effective asset management system requires predictable and adequate financing to ensure continuity and the ability to manage its asset portfolio to preserve value and maximize value at disposal. Where the program relies on government funding, predictable and adequate financing is critical. Although asset management offices may use proceeds from the forfeiture fund for asset management costs, it may be years before an asset management office can rely on such funds for sufficient and predictable funding.
4. **Efficient procurement function:** Asset management offices should have an efficient and transparent procurement function, including the ability to contract asset management services such as asset valuation, custody, storage, management, and disposal.
5. **Integrity, transparency, and accountability:** To maintain public trust and confidence, information regarding the asset management office's operations and outcomes should be publicly available, including (a) the number of seized assets and the value recovered from criminals and (b) financial records prepared by independent auditors.

Recommendations:

- **Establish clear, definitive, and transparent rules governing the funding of the asset management system, with measures to restrict undue external influence.**
- **Require rigorous independent and transparent accounting procedures if the asset management office has more autonomy and**

control over its own funding (including funding derived from the disposal of assets).

Asset Management Policies and Procedures

Effective asset management requires clear and comprehensive policies and procedures to ensure operational efficiency and maximization of value at disposal. Comprehensive policies provide transparency and accountability for the asset management office, which are essential for maintaining public support. They can also serve to protect asset management personnel from allegations of improper conduct (for example, with regard to interim use of a seized asset since the personnel can justify their actions with reference to established policies). The asset management office should establish and maintain accurate, reliable, and up-to-date information about the assets that are subject to seizure, restraint, confiscation, and disposal. This inventory should be updated regularly, and all expenses related to each asset should be recorded.

Pre-Seizure Planning

Pre-seizure planning is crucial to protect the government from experiencing net financial losses or reputational harm from the seizure of assets. Pre-seizure planning may be defined as the process of anticipating and making collaborative, informed decisions to (a) identify assets available for seizure, (b) determine whether such assets should be seized or targeted for forfeiture (or both), (c) plan the logistics of asset seizure, (d) preserve asset value until disposal, and (e) assess likely disposal options. The entire asset management life cycle of an asset should be considered prior to seizure.

Recommendations:

- **Consider including pre-seizure planning elements within the asset forfeiture legislative framework, including appropriate consultation with the asset management office, cost-benefit analysis of the seizure, and value thresholds for seizure.**
- **Allow, where appropriate, alternatives to asset seizure within the asset forfeiture legislative framework, such as seeking noncustodial restraint measures or substitute assets, increasing fines, allowing sales to continue with the government seizing the proceeds, and considering tax foreclosure.**

Management of Seized Assets

The purpose of managing seized and restrained assets is to preserve value until a confiscation decision. If seized assets are not managed well,

their value may decrease significantly by the time of the forfeiture decision or order of the return of the assets to the defendant. If an asset was not managed correctly, the government may be required to compensate the defendant for the decrease in value of the asset. As a result, public confidence and support for forfeiture frameworks may erode.

Preserving asset value during custody is more easily said than done. Assets may be held in custody for an uncertain period because of the length of the forfeiture proceedings. Asset valuations may fluctuate for reasons beyond the control of the asset management office, including previously unidentified asset liabilities, unforeseen third-party claims, changes in market conditions, and natural disasters. For these reasons, the asset forfeiture framework should include, where appropriate, alternatives to seizure, interim use of assets, and the possibility of interim sales of seized assets, particularly perishable or rapidly depreciating assets or those that can be stored only at a disproportionate or excessive cost.

Cost management is paramount to an efficient asset management program. To maintain asset value, an asset management office must have sufficient financial resources through the anticipated date of disposal after forfeiture. Possible asset management expenses during custody include expenses of transportation, storage, security, insurance, maintenance, service fees, utilities, mortgage or rental payments, salaries, private sector contractor fees, and even disposal, such as publicity and auction venue rental in the case of interim sales. The maintenance expenses of some asset classes—for example, luxury yachts or aircraft—can be significant. The asset management office should seek to preserve the value of assets, at an appropriate level of care for the asset type and under conditions specific to the asset.

Recommendations:

- **Ensure that the asset management office has the necessary resources and capacity to manage the portfolio of seized assets, including complex assets. If the office lacks the requisite resources and capacity, allow for alternatives to seizure or funding for the use of private sector contractors.**
- **Allow interim sales of seized assets under the asset forfeiture legal framework, particularly those assets that are perishable, are rapidly depreciating, or can only be stored at a disproportionate or excessive cost.**

Disposal of Confiscated Assets

The disposal phase involves two responsibilities: (a) recovering all criminal instruments and proceeds from the owner as directed by the court and (b) making sure that the recovered proceeds are allocated according to the confiscation order or domestic laws. Depending on the forfeiture

framework, available disposal options for confiscated assets are (a) sale; (b) official use; (c) social reuse; and (d) salvage, scrap, or destruction. Proceeds from disposal are typically allocated to the general treasury (national revenue) fund, a special-purpose fund such as a forfeiture fund, or victim compensation funds.

Sale of Confiscated Assets

After a final confiscation order has been issued, the most common way to dispose of the asset is through sale. For movable assets, auctions are usually preferred for value maximization and transparency. However, for complex or high-value assets, other methods such as public tenders or private sales may be more appropriate. Asset management offices typically use specialized contractors, such as yacht brokers, real estate agents, or auctioneers, to maximize value at disposal. Contracts with specialized contractors can be fee-based, percentage-based, or a combination of the two. Appropriate promotion or marketing of the auction or sale of confiscated assets usually generates greater interest and likely higher sale proceeds.

Recommendations:

- **Establish clear policies to prevent conflicts of interest and reputational harm in asset disposals. Defendants, their associates, and employees or immediate family members of the asset manager, asset management office, or law enforcement agency involved should not be allowed to bid on confiscated assets.**
- **Develop relationships with dependable private sector contractors for different asset classes and different stages of asset management.**

Official Use of Confiscated Assets

Confiscated assets can be given to a government agency for official use instead of being sold or disposed of, if allowed by the forfeiture legal framework or authorized by the court. For instance, law enforcement agencies may use confiscated vehicles for undercover work, prisoner transport, or other official purposes. Assets should only be assigned to official use when there is a clear benefit that may justify such allocation. However, it should be specified that no assets from victims' cases are to be used.

The use of confiscated assets by law enforcement agencies has been criticized heavily in some jurisdictions. Critics assert that when law enforcement agencies can use confiscated assets for their own purposes, they may be incentivized to prioritize asset forfeiture over other law enforcement activities or to target individuals or groups solely for the purpose of seizing their assets, and thus contribute to the overpolicing of marginalized communities.

Recommendations:

- **Establish appropriate legislation and clear policies for confiscated assets to be allocated to official use, with specific procedures in place to ensure transparency and efficiency in decision-making.**
- **Ensure that official-use programs have appropriate oversight, accountability, and transparency.**

Social Reuse

Social reuse is the authorized transfer of confiscated assets to a government agency or to its designee, such as a nongovernmental organization (NGO), for use to support social welfare. Social reuse may be the most appropriate disposal method for low-value property (for example, property located in a high-crime area) or where there is limited buyer interest (for instance, property that was previously owned by a notorious criminal). Assistance and resources from an NGO or a government agency may be necessary for continued success of the social reuse.

Recommendations:

- **Develop a strategy and legal framework for allocating confiscated assets for social reuse that goes beyond case-by-case interventions. Social reuse decisions should be efficient and transparent and should provide a clear benefit to the community. Internal controls and external audits should ensure correct use of the assets.**
- **Ensure that the necessary financial resources and technical capacities are available to citizens or NGOs to maintain the social reuse program.**

Salvage, Scrap, or Destruction

In some instances, forfeited assets may have no viable disposal options other than salvage, scrap, or destruction. Examples of such assets include low-value assets; seized assets that were not properly maintained or stored; assets that have depreciated due to being held longer than anticipated until forfeiture; and counterfeit, illegal, or dangerous goods.

Recommendation:

- **Ensure that the forfeiture framework and asset management policies and procedures allow for salvage, scrap, or destruction of seized or forfeited assets in certain circumstances.**

Allocation of Proceeds

Asset recovery is primarily focused on removing the proceeds and instruments of crime from the control of criminals. However, there are other objectives that have gained prominence in many jurisdictions and under international or regional instruments. For example, in cases of embezzlement of public funds, the United Nations Convention against Corruption (UNCAC), Article 57, provides that confiscated property be returned to a requesting state. In other cases, UNCAC obliges requested states to give “priority consideration” to the return of confiscated assets to their prior legitimate owners or the compensation of the victims of the crime. The recovered proceeds of corruption may be used to compensate individual victims and support organizations and programs that benefit communities that have suffered the negative effects of corruption. For example, confiscated assets can be used to fund community development projects. This helps provide restitution to those affected by corruption and can increase support for the rule of law.

In some jurisdictions, special-purpose or forfeiture funds have been set up to deposit the proceeds of crime. These funds require infrastructure and capacity to manage and document transfers into and out of the government’s account. They can be used to meet the objectives of the government’s asset recovery program, including funding capacity training to manage seized and confiscated property. In jurisdictions with a federal system, an equitable sharing of proceeds can be used to foster better coordination and cooperation between national and subnational law enforcement agencies.

Overall, the use of confiscated assets for victim compensation and community support projects helps ensure that confiscation orders are not enforced at the expense of victims. It also provides a more aggressive approach to provisional restraint and can save victims the significant fees and expenses associated with private law cases. This practice is supported by the global community and reflected in international conventions such as the UNCAC.

Abbreviations

AGRASC	Agency for the Management and Recovery of Seized and Confiscated Assets <i>L'agence de gestion et de recouvrement des avoirs saisis et confisqués</i> , France)
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
AMO	Asset Management Office
ANABI	National Agency for the Management of Seized Assets (Romania)
ANBSC	<i>Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati</i> (Italy)
ARIN	asset recovery interagency network
ARIS	Asset Recovery Incentivization Scheme (Incentivisation?)
ARMA	National Agency of Ukraine for Identifying, Tracing, and Managing Assets Derived from Corruption and Other Crimes
ARO	asset recovery office
BAMIN	Balkan Asset Management Interagency Network
BRD	Department of Assets Recovery and International Legal Cooperation (Brazil)
CARIN	Camden Asset Recovery Inter-Agency Network
C.A.U.S.E.	Confiscated Assets Used for Social Experimentation
CD	certificate of deposit
CDD	customer due diligence
CICAD	Inter-American Drug Abuse Control Commission
COSC	Central Office for Seizure and Confiscation (Belgium)
COSP	Conference of State Parties to the Convention
DEA	Drug Enforcement Agency (US)
EU	European Union
FATF	Financial Action Task Force
FIU	financial intelligence unit
GFAR	Global Forum on Asset Recovery
GlobE Network	Global Operational Network of Anti-Corruption Law Enforcement Authorities
Hrv	hryvnia (Ukraine)
IACC	Independent Authority Against Corruption of Mongolia
ICJ	International Court of Justice
IFO	interim freezing order
INDEP	<i>Instituto para Devolver al Pueblo lo Robado</i> (Mexico)
ISP	internet service provider
IT	information technology

JAAC	jewelry, art, antiques, and collectibles
KYC	know your customer (due diligence)
LLP	limited liability partnership
LEA	law enforcement agency
MLAT	mutual legal assistance treaties
MOU	memorandum of understanding
MLA	mutual legal assistance
NABU	National Anti-Corruption Bureau (Ukraine)
NCB	non-conviction based (confiscation)
NFT	non-fungible token
NGO	nongovernmental organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
1MDB	1Malaysia Development Berhad (case)
POCA	Prevention of Organised Crime Act (South Africa)
PPE	personal protective equipment
PRONABI	<i>Programa Nacional de Bienes Incautados</i>
R	rand (South Africa)
RICO	Racketeer Influenced and Corrupt Organizations Act (US)
ROARMIS	Romanian Asset Recovery and Management Integrated System
SAE	<i>Servicio de Administración y Enajenación de Bienes</i> (Mexico)
SAR	suspicious activity report
SEC	Securities and Exchange Commission (US)
SERAP	Socioeconomic Rights and Accountability Projects
SETAM	system for electronic trade of seized property
SIENA	Secure Information Exchange Network Application
SOE	state-owned enterprise
SPMD	Seized Property Management Directorate (Canada)
StAR	Stolen Asset Recovery Initiative
STR	suspicious transaction report
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
USMS	US Marshals Service
UWO	unexplained wealth order
VIN	vehicle identification number
WHO	World Health Organization
WoF	warrant of fitness

Introduction

The fight against corruption has evolved over time. Initially, the focus was on criminalizing corrupt activities and the laundering of the proceeds of corruption.¹ A consensus formed that relying solely on traditional criminal sanctions such as imprisonment was not an effective way to deter corruption, especially if corrupt individuals were able to retain the proceeds of their illegal activities. Greater emphasis began to be placed on the recovery of stolen assets.²

Asset recovery seeks to deprive corrupt individuals of benefiting from their crimes, deter future corruption, and return stolen assets to their rightful owners or compensate victims of corruption, including the state. To achieve these goals, various legal tools in addition to criminal confiscation have been developed or expanded, such as non-conviction based asset forfeiture, civil lawsuits, criminalization of illicit enrichment, unexplained wealth orders, insolvency proceedings, and taxation measures. Other approaches to tighten the net on corruption include improving financial disclosure regimes of public officials, strengthening the standards on customer due diligence, and improving the transparency of beneficial ownership. Technical assistance in asset recovery has been provided to domestic and foreign law enforcement officers, financial intelligence analysts, private sector compliance officers, and prosecutors and judicial officers, among others. Given the prevalence of cross-border laundering of the proceeds of crime, especially in cases of grand corruption, several international and regional initiatives have been established to facilitate international cooperation.³

Asset recovery efforts are beginning to yield noteworthy results. Since 2010, close to US\$10 billion in corruption proceeds have been frozen, restrained, confiscated in a destination country, or returned to a country that was harmed by corruption. This figure includes more than US\$4.1 billion in assets that have been returned internationally since 2010 and US\$5.3 billion in assets frozen or restrained. The United States alone has repatriated nearly US\$1.2 billion in corruption proceeds to Malaysia between 2018 and 2021 (StAR Initiative 2021).

However, without effective management of the seized and confiscated assets, there may be little to show for these efforts. Although corrupt officials may have been deprived of the benefit of the stolen assets, diminished or negligible value from the disposal of confiscated stolen assets deprives society once again of the assets' productive use. This *Guide* continues the evolution of the fight against corruption with a focus on preserving the value of seized assets and maximizing the value at disposal of confiscated assets.

Audience

This *Guide* aims to provide guidance to practitioners on asset management, from pre-seizure planning to preserving value during custody to maximizing value at disposal. It is intended to provide practitioners with the foundations to build an effective asset management function and to grow the asset portfolio to manage complex assets. Accordingly, the *Guide* includes recommendations and good practices derived from international studies (notably, studies convened by the United Nations Office on Drugs and Crime [UNODC]), experience from interviews with asset management experts, and case examples. In addition, practitioners may benefit from discussions of different approaches among jurisdictions, the case examples, and the detail on managing specific asset types set forth in chapter 6. The *Guide's* Overview of Policy Recommendations distills high-level recommendations to assist policymakers in developing an effective asset management system in their jurisdictions.

Key Terms

Different jurisdictions may use different terms to describe the same legal concept or procedure. For example, some may use “confiscation,” whereas others use “forfeiture”; some may use “seizing,” whereas others use “restraining,” “blocking,” “freezing,” or “attaching” when referring to provisional measures.

To maintain consistency in this *Guide*, the following terminology will be used:

- “Asset management office” refers to the government agency, office, or unit responsible for managing seized or confiscated assets.
- “Asset manager” refers to any entity or person, including private sector contractors, that has been given the legal authority—through forfeiture laws, a court order, a contract, or other means—to manage, hold, or dispose of assets that have been seized or confiscated.
- “Confiscated assets” or “forfeited assets” refers to assets subject to a confiscation or forfeiture order.
- “Confiscation” or “forfeiture” (used interchangeably) refers to the permanent deprivation of property by order of a court or other competent authority. Persons or entities that hold an interest in the asset at the time of the confiscation lose all rights to that asset.
- “Confiscation framework” or “forfeiture framework” refers to a jurisdiction’s forfeiture laws, regulations, policies, and procedures.
- “Interim sale” refers to the sale of seized assets prior to a confiscation order if permitted by the jurisdiction’s forfeiture laws, through an order

by the court, or with consent of the asset's owner. Jurisdictions use different terms for this action, such as pre-judgment sale, pre-confiscation sale, pre-trial sale, interlocutory sale, early sale, or anticipated sale.

- “Provisional measure” refers to the temporary prohibition against the transfer, conversion, disposition, or movement of assets or temporary assumption of custody or control of assets pursuant to an order of a court or other competent authority. Provisional measures may be called “freezing,” “restraint,” “seizure,” “blocking,” or “attaching” of an asset.
- “Restrained assets” refers to assets subject to provisional measures in which physical custody is not taken pending the determination of confiscation proceedings.
- “Seized assets” refers broadly to assets subject to judicially authorized actions such as seizure, freezing, restraint, and any other provisional measures to prevent the dissipation of assets that may be liable to confiscation or forfeiture. Although a prior court order or authorization from prosecutors or investigative judges might generally be required, some jurisdictions grant law enforcement officers the right to seize assets. Typically, physical possession is taken of the targeted asset.

A glossary of asset recovery terms, including many of the specialized terms used within, may be found at <https://star.worldbank.org/glossary-asset-recovery-terms>. Because jurisdictions often use different terminology to describe the same legal concept or procedure, this glossary provides examples of alternative terms that may be used.

How to Use This Guide

It is important to note that forfeiture and asset management frameworks can differ greatly among jurisdictions. What may be allowed or required in one jurisdiction may not be the same in another. Additionally, the responsibility for asset management can take different forms across jurisdictions. For example, in some jurisdictions a government agency is responsible for managing all public assets, whereas in others a unit within a law enforcement agency handles the management of seized or confiscated assets. The *Guide* attempts to point out these differences where they exist, and it highlights how different concepts or practices may offer similar solutions to the same challenges. However, it is not designed to be a detailed compendium of law and practices. When reading the *Guide*, practitioners should consider the legal systems, law enforcement structures, resources, legislation, and procedures specific to their jurisdictions.

The *Guide* is organized into six chapters and five appendixes of additional resources.

- *Chapter 1, “Overview of Asset Management,”* provides a brief overview of the legal avenues for seizure and confiscation, the life cycle of asset confiscation, and key terms used in the *Guide*.

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- *Chapter 2, “Establishing an Asset Management Function,”* presents considerations for establishing an asset management function, including structure, general principles, policy and procedures, asset inventory systems, and good procurement practices.
 - *Chapter 3, “Pre-seizure Planning,”* provides an overview of the asset management issues that practitioners must consider before using provisional measures and while planning to secure the assets.
 - *Chapter 4, “Management of Seized Assets,”* discusses issues that arise when managing seized assets, including cost management, interim sales, interim use, and supervision of contractors.
 - *Chapter 5, “Disposal of Confiscated Assets,”* provides an overview of different disposal mechanisms for confiscated assets, such as sale, official use, social reuse, salvage, scrap, and destruction, as well as a brief discussion of the allocation of the proceeds from disposal.
 - *Chapter 6, “Seizure and Confiscation of Real Property, Personal Property, and Complex Assets,”* provides a resource guide for the different asset types, using case examples to describe the complexities of each type: real property, personal property (including jewelry, planes, vehicles, artwork, collectibles, and animals), and complex assets (including operating businesses, financial instruments, and digital assets such as cryptocurrencies).

The appendixes contain additional reference tools and practical resources to assist practitioners, as follows:

- Appendix A: Asset Management Office Operations Plan
- Appendix B: New Asset Case Notification Form
- Appendix C: Property Inspection Report
- Appendix D: Vehicle Inspection Report
- Appendix E: Field Report on Seized Business

References

StAR Initiative. 2021. “Mapping International Recoveries and Returns of Stolen Assets under UNCAC: An Insight into the Practice of Cross-Border Repatriation of Proceeds of Corruption over the Past 10 Years,” CAC/ COSP/2021/CRP.12. Conference room paper, UNODC Conference of the States Parties to the United Nations Convention against Corruption, Ninth Session, Sharm El-Sheikh, Egypt, December 13–17, 2021.

Notes

- 1 See, for example, the adoption of the Organisation for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997 (establishing legally binding standards to criminalize bribery of foreign public officials in international business transactions and related measures); Council of Europe, "Criminal Law Convention on Corruption," January 27, 1999, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>; and Financial Action Task Force on Money Laundering, "Forty Recommendations on Money Laundering," 1990, <https://www.fatf-gafi.org/content/dam/fatf-gafi/annual-reports/1990%20ENG.pdf>.
- 2 See, for example, the United Nations Convention against Corruption (UNCAC) adopted in 2003, which requires states parties to take measures to restrain, seize, confiscate, and return the proceeds of corruption.
- 3 These initiatives include the creation of Asset Recovery Inter-agency Networks, the Egmont Group of Financial Intelligence Units, and the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network).

1 Overview of Asset Management

1.1 Introductory Remarks

Asset recovery refers to the process of identifying, seizing, confiscating, and returning assets that have been obtained through illegal means, such as corruption or money laundering. The purpose of asset recovery is to divest criminals of the instruments used in and the benefits derived from their crimes, and to return such property to its legitimate owners or to compensate victims of the crime. For asset recovery to achieve these goals, there must be effective asset management to preserve the value of seized assets and maximize the value of the disposal of forfeited assets.¹

Asset recovery may be conducted through a variety of legal avenues. Regardless of the legal avenue, the fundamental processes for asset recovery and asset management are the same (see figure 1.1).

Figure 1.1. Asset Recovery and Asset Management Processes



Source: World Bank.

Because there are many other existing resources,² the *Guide* does not discuss in detail the asset recovery process or the legal avenues or mechanisms to seize or recover assets. The focus of this *Guide* is not on how to recover assets, but on how to manage seized or forfeited assets.

To set a foundation for understanding asset management, this chapter provides a brief overview of legal avenues for asset confiscation, including issues that may arise with the enforcement of confiscation orders. Next, the life cycle for the management of confiscated assets is introduced (it is discussed in further detail in chapters 3, 4, and 5). Finally, because different jurisdictions may use different terms to describe the same legal concept or procedure, for consistency in this *Guide*, key terms are defined.

1.2 Legal Avenues for Asset Confiscation

There are diverse legal avenues for pursuing asset recovery, including³

- Domestic criminal prosecution and confiscation, with a mutual legal assistance (MLA) request to enforce orders on assets located in a foreign jurisdiction
- Non-conviction based (NCB) confiscation, followed by an MLA request or other forms of international cooperation to enforce orders in foreign jurisdictions⁴
- Criminal prosecution and confiscation or NCB confiscation initiated by a foreign jurisdiction (requires jurisdiction over an offense and cooperation from the jurisdiction harmed by the corruption offenses)
- Private civil actions, including formal insolvency proceedings
- Administrative confiscation.

In practice, criminal confiscation and NCB confiscation are the most frequently used measures.⁵

The availability of these avenues, either domestically or in a foreign jurisdiction, will depend on the laws and regulations in the jurisdictions involved in the investigation and on international or bilateral conventions and treaties. In addition, there are other legal, practical, or operational realities that may influence the avenue selected.⁶

In each of these avenues, provisional measures may be applied to prevent the dissipation, concealment, or transfer of the asset prior to a confiscation decision by the court or other competent authority. Once a confiscation order is made, enforcement of the order depends on whether the order is property- or value-based, or both.

1.2.1 Property-Based Confiscation

Most jurisdictions apply a form of property-based confiscation. *Property-based confiscation* refers to the confiscation of property found to be the proceeds or instrumentalities of a crime, and it requires a link between the asset and the offense. In property-based confiscation systems (also referred to as object-based confiscation, instrument forfeiture, or in rem forfeiture), the confiscation order directs that, or effects that, ownership of a specified asset be transferred to the government. The confiscation order specifically identifies the asset in question, and in some jurisdictions the asset is even named as a party in the proceedings.⁷ Forfeiture of the asset is permitted where there is proof of the connection between the offense and the asset (that is, the asset is the direct proceed or instrumentality of the crime).⁸

The court must have control over the asset before making a final decision so that the order can be enforced when the judgment is delivered. If the asset cannot be located and is not under the court's direction, a confiscation hearing may be futile.

After the confiscation order is issued, the asset can either (a) be retained in the form in which it was seized pending an allocation decision or (b) be sold, with the proceeds retained by or on behalf of the state. The competent authority to make this decision varies among jurisdictions. Clear and transparent guidelines should govern the process of deciding whether to sell the confiscated assets or retain them for official use (for example, for use by law enforcement or a social reuse program). Such guidelines will protect the asset management office from undue criticisms on this issue.⁹

1.2.2 Value-Based Confiscation

In a value-based confiscation system (also known as *in personam* confiscation), the confiscation order directs the defendant to pay to the government an amount of money, either equal to the value of all benefits derived from the offense or of an asset of value equivalent to the instrument or of proceeds directly involved in the crime. Thus, value-based systems require evidence of the connection between the assets and the perpetrator of an offense.¹⁰ The order is enforceable against any property owned by the convicted person up to the value specified in the order. As a result, value-based confiscation jurisdictions can seek to confiscate money in lieu of other actual property and thus avoid custody, asset management expenses, or disposal complications.

1.2.3 Enforcement of Confiscation Orders

Enforcing domestic confiscation orders can be challenging, and it becomes even more difficult when trying to do so across borders.¹¹ However, having a competent, efficient, and effective domestic asset management capacity (such as an asset management office), with proper checks and balances in place to ensure the integrity of the process, can significantly improve domestic asset recovery. Additionally, it can serve as a means for returning proceeds from abroad.

In some jurisdictions, a single entity may not be established with the exclusive responsibility of disposing of confiscated assets at the domestic level. The responsibility remains either that of (a) the prosecuting or other law enforcement authority who obtained the order or (b) the fiscal authorities responsible for collection of debts owed to the state.¹² In some jurisdictions, the confiscation order is executed by the entities responsible for collection of criminal penalties. In other jurisdictions, if the defendant fails to pay, the order is registered as a civil judgment to be executed against the defendant's assets by court-appointed enforcement officers, such as bailiffs. The enforcement process can be protracted and expensive if the only available mechanism is civil debt recovery proceedings.

Unfortunately, in many jurisdictions there is a significant discrepancy between the value of confiscation orders made and the value of confiscation orders that are actually satisfied. This means that in some cases confiscation orders are made but there is not enough property seized or identified during the criminal investigation to satisfy the orders. As a result, the orders remain unsatisfied. Additionally, confiscation orders may remain unenforced because of capacity or resource constraints. Common reasons for unsatisfied or unenforced confiscation orders include the following:

- The confiscation order was made without sufficient property to satisfy the order having been seized or identified during the criminal investigation.
- Despite confiscation orders having been obtained, no authority has taken the initiative to further trace and identify assets internationally. Even then, once traced and located, an asset needs to be subject to a confiscation order recognized and enforced by the foreign jurisdiction.
- Fiscal administrative bodies without law enforcement powers may be responsible for enforcing the orders, but they often lack the ability to trace assets after a conviction.
- The responsibility for enforcing confiscation orders may be given to prosecuting authorities or investigative bodies that lack the necessary expertise, capacity, or focus to carry out the enforcement function. These bodies are primarily focused on investigation and prosecution functions and often do not have the expertise to execute court orders, resulting in the collection function being neglected.
- Third parties may emerge after the confiscation proceedings to assert title claims to the assets subject to the confiscation order. In these cases, the bailiff or other administrative enforcement authority may lack the relevant background and experience to defeat the claim, further complicating the enforcement process.¹³

These unsatisfied confiscation orders may generate adverse publicity for the asset recovery program as a whole. In jurisdictions in which corruption among public officials is perceived to be widespread, citizens may assume

that the failure to execute confiscation orders is due to ongoing corruption, which further undermines the rule of law in those jurisdictions. The Financial Action Task Force (FATF) has recognized the importance of the realization of confiscation orders: the value or proportion of confiscation orders realized is considered in determining a jurisdiction's effectiveness in confiscation of the proceeds and instrumentalities of crime.¹⁴

For these reasons, some jurisdictions have introduced special realization mechanisms. (See box 1.1.) For example, civil law enforcement or debt-collection procedures may be used to enforce confiscation orders. In such cases, the asset management office is given investigative powers post-confiscation to obtain information on the financial position of the person subject to the confiscation order.

1.3 Asset Confiscation Life Cycle

Regardless of the legal avenue for confiscation or the type of confiscated asset, there is a general life cycle for the management of confiscated assets: pre-seizure planning, taking custody of the asset, managing the seized asset, and disposing of the asset after a forfeiture order (see figure 1.2).

The first stage is pre-seizure planning, which involves determining what, when, where, and how to enforce a potential future confiscation order. Pre-seizure planning is arguably the most important stage of the entire process. Its goal is to ensure that assets identified for restraint or seizure,

Box 1.1. United Kingdom: Addressing Unfilled Confiscation Orders

To address the problem of unfulfilled confiscation orders, in the United Kingdom, failure to make payment of a value-based confiscation order within a specified time frame can result in the imposition of an additional period of imprisonment. Convicted persons may apply for a reduction in the value of the order if they can demonstrate that they have no other assets from which to satisfy the order. Similarly, the United Kingdom can apply for an increase in the value of the order made if further property of the convicted person is identified. This serves to incentivize convicted persons to realize their assets to satisfy the confiscation order to avoid additional time in custody. However, this is only an option when confiscation is seen as part of the punishment of the offender and not merely as a remedial, preventative, restorative, or safety measure.^a

a Article 27 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, 16.V.2005) prohibits the imposition of imprisonment in default of payment of a value-based confiscation order and provides that "[t]he requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 23, if the requesting Party has so specified in the request." See also King (2016) for a critique of confiscation regimes that impose penal consequences in the absence of the full panoply of substantive and procedural rights that accrue to accused persons facing a criminal trial.

Figure 1.2. Asset Confiscation Life Cycle



Source: T. J. Abernathy.

and ultimately confiscation, will be available to satisfy a confiscation order and will have sufficient value once the order is made, after considering the costs of preserving their value.

After pre-seizure planning and with the approval of the relevant judicial authority, the next step is custody, which involves taking possession of the assets and ensuring that custody arrangements suit the requirements of the asset in question. (See chapter 3 for a detailed discussion of pre-seizure planning, including steps for taking custody of an asset.)

From this point until a confiscation order is obtained, the value of the asset must be preserved, and where the law, budget, and type of asset allow it, there is the option to increase the value of the asset or to manage a productive asset profitably. Management includes storage, maintenance, valuation, and inventory. Again, if allowed under the forfeiture framework, management may involve interim sale, which is by far the most cost-effective interim management measure. In complex cases, an asset management office may need to hire private sector contractors to manage the asset according to industry best practices. If a confiscation order is not obtained, the asset (or proceeds from any interim sale) will be returned to its owners. (See chapter 4 for a detailed discussion of the management of seized assets.)

Once a confiscation order is made, it is the responsibility of the authority in charge of execution to ensure that the court's order is fully carried out. Upholding the rule of law requires that binding confiscation decisions are implemented. Unfulfilled confiscation orders may generate adverse publicity for the asset recovery system as a whole. In jurisdictions in which corruption among public officials is perceived to be widespread, citizens may assume that the failure to execute confiscation orders is due to ongoing corruption, which further undermines the rule of law in those jurisdictions. For these reasons, jurisdictions have introduced special realization mechanisms, such as using private law debt-collection procedures or giving asset management offices investigative powers post-confiscation to facilitate fulfillment of the order. (See chapter 5 for a detailed discussion of disposal.)

Throughout the asset management life cycle, asset management personnel will need to make an array of practical decisions, such as ensuring that it is viable to seize assets from an economic perspective, competently managing seized assets, engaging experienced and qualified contractors, conducting sales to maximize recovery, and seeking permission to destroy or return assets with a negative value. Policies, procedures, and contracts should be designed and improved on the basis of experience and lessons learned to assist in the decision-making process. Ideally, to promote transparency and build trust and confidence in the asset management system, these policies and procedures should be publicly available or obtainable upon request.

Behind these practical decisions lies an ethical objective: to recover as much value as possible of what criminals took from victims and society and to returning it to the victims and society.

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Notes

- 1 Article 31, para. 3 of the United Nations Convention against Corruption commits states parties to adopt such “legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property...”
- 2 See, for example, “Stolen Asset Recovery (StAR) Series” at the beginning of this Guide.
- 3 See, for example, EPRS (2023), 3, for a discussion of the types of confiscation measures available in European Union (EU) Member States.
- 4 NCB confiscation does not require a trial or a criminal conviction but only a noncriminal confiscation proceeding. The NCB proceeding may or may not parallel a criminal proceeding. NCB confiscation is not allowed in all jurisdictions. See Brun et al. (2021), chap. 1.
- 5 See Brun et al. (2021), chap. 1.
- 6 See Brun et al. (2021) chap. 1 for greater detail on the asset recovery process and chap. 2 for strategic considerations in selecting among these legal avenues.
- 7 See, for example, *United States v. One White Crystal Covered Bad Tour Glove and Other Michael Jackson Memorabilia*, 2:11-cv-03582, (C.D. Cal.).
- 8 European Commission (2016, p. 9) defines “Ordinary confiscation” as “a confiscation measure directed against an asset which is the direct proceed or the instrumentality of a crime, following a criminal conviction for that crime.”
- 9 See Secretariat to the UNCAC Conference of State Parties (2018). See in particular guideline 7, which recommends that the policy choices regarding the distribution of realized assets or recovered proceeds be made explicit in the law, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReview-Group/12-14November2018/V1807476e.pdf>.
- 10 Among other jurisdictions, all EU member states (except for Cyprus and Malta) allow value-based confiscation. See Center for the Study of Democracy (2014), page 18.
- 11 For a detailed discussion on the enforcement of confiscation orders, see Betti, Kozin, and Brun (2021).
- 12 EU member states have adopted different legislative approaches to the disposal of confiscated assets. In some, disposal is regulated by substantive or procedural criminal legislation and penalty enforcement acts; in others, disposal is regulated by different legal acts, some of which may include criminal procedure acts that complement one another on the matter. A third distinct group regulates confiscation and disposal of such types of confiscated assets in special legislative acts. Similarly, EU member states continue to lack a single entity exclusively charged with the task of confiscated asset disposal at the national level. See Vettori, Kolarov, and Rusev (2014), 20–23.
- 13 Unless these claims can be defeated with reference to constructive notice requirements, the nominal owner may have a second opportunity to have their claim to the property determined.
- 14 Financial Action Task Force, “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation,” adopted by the FATF Plenary on February 2012, as amended February 2023, Immediate Outcome 8, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>.

2 Establishing an Asset Management Function

2.1 Introductory Remarks

This chapter presents the core principles and institutional arrangements of an effective asset management system. Regardless of the scale of operations or resources, each asset recovery program needs to establish certain functions such as procurement, finance, asset tracking, or inventory management.

Article 31(3) of the United Nations Convention against Corruption (UNCAC) directs state parties to adopt measures to regulate the administration of frozen, seized, or confiscated property by the competent authorities. In-country reviews, conducted in the framework of the UNCAC Implementation Review Mechanism, identified the absence of a body tasked with the management and disposal of frozen, seized, and confiscated assets and the lack of an effective legal framework governing the administration of such assets as key challenges in the implementation of article 31.

In 2019, the Conference of State Parties to the Convention adopted non-binding guidelines on the management of frozen, seized, and confiscated assets.¹ In relation to the institutional arrangements for the management of seized and confiscated property, the following recommendations were offered:

- Equip the relevant institutions with adequate skills and capacities and empower them to enter into the necessary agreements or arrangements.
- Implement central asset registration systems and databases throughout the asset management process and establish information technology systems and databases for asset registration.
- Give due consideration to the funding, autonomy, and accountability of dedicated asset management structures.
- Explore the possibility of dedicated asset management offices (AMOs) funding their own operations fully or partially from confiscated proceeds, to assist in making them economically viable over time.

In 2022, a European Union (EU) Commission impact assessment report (EU 2020)² identified “inefficiencies in asset management procedures” as a major obstacle to effective asset recovery in the EU. The inefficiencies in question include a lack of specialization among authorities managing assets and insufficient use of optimal management methods. In 2023, the EU Commission is proposing a new directive on asset recovery and confiscation³ that pays particular attention to strengthening the asset management function.⁴ If adopted, the directive will require EU member states to establish at least one asset management office with the following responsibilities:⁵

- To ensure the efficient management of frozen and confiscated property, either by directly managing it or by providing support and expertise to other competent authorities responsible for managing it;
- To provide support with pre-seizure planning to the competent authorities responsible for tracing, identifying, and seizing assets and managing frozen and confiscated property;
- To cooperate with other competent authorities responsible for the tracing, identification, freezing, and confiscation of property; and
- To cooperate with other competent authorities responsible for the management of frozen and confiscated property in cross-border cases.

The Common African Position on Asset Recovery, adopted by the African Union in 2020, similarly advocates that African states establish a recovered asset management agency or designate an existing entity for management of returned assets with clear administrative powers and responsibilities for transparency and accountability.

These actions and developments in other regions have resulted in a proliferation of administrative structures dedicated to the asset management function. Practitioners working in these institutions are actively seeking out forums and networks to exchange knowledge and address common challenges with their peers. The rapid development of the Balkan Asset Management Interagency Network⁶ is a noteworthy example of this trend.

2.2 General Principles

The level of trust and support for an asset recovery system can be significantly influenced by the public’s confidence in the asset management and disposal functions. If authorities can demonstrate that they have competently and cost-effectively managed seized property and enforced confiscation orders to the fullest extent and can transparently account for the proceeds generated, then public trust and support will likely be greater. Generally, the public will be more supportive if confiscated property is optimally utilized and the proceeds are applied to repair the harm caused by the underlying crime. Effective communication about the value of assets seized and confiscated annually and information about how confiscated

property is allocated can build trust and confidence in the asset recovery system.

Conversely, deficiencies in asset management can put the credibility of the entire asset recovery system at risk. This can happen, for example, when images of valuable and productive seized property being carelessly left to deteriorate circulate in the media, as is often the case with seized vehicles left in police impoundment lots. When the asset management office is unable to provide credible information about assets under management or fails to account for the whereabouts of confiscated property, public trust in the system can be eroded. Worse, when confiscated property is misused or misappropriated by those entrusted with its care, the damage to the asset recovery system can be irreparable.

While they are primarily administrative functions that are usually performed independent of the functions of law enforcement, the functions of preserving seized property believed to be the proceeds and instruments of crime and disposing of such property after a final confiscation order has been made serve a larger purpose of upholding the rule of law. Therefore, the responsibility must be exercised in a credible, fair, transparent, and ethical manner.

2.2.1 Integrity, Accountability, and Transparency

In April 2005, the G8⁷ published a guide to best practices (G8 Lyon/Roma Group 2005). This document sets forth a number of asset management principles that remain applicable:

- While the law enforcement objective of removing the proceeds or instrumentalities of crime should be paramount and could result in the seizure of unviable assets, good fiscal decisions should be considered. The focus should be on recovering assets, rather than liabilities. Proper planning must take place before assuming responsibility for management of seized assets, and once assumed, the administration mechanisms should be efficient and cost-effective.
- Strong controls with respect to the administration of seized assets must be put in place to guarantee the integrity of the asset management function. There should be a clear separation of duties so that no one person has complete control over all aspects of managing the assets. Accountability can be enhanced by implementing information technology (IT) systems to track and manage inventory and costs of managing confiscated or forfeited assets. No one should receive a personal benefit or use seized property for personal purposes, and no person officially responsible for the seizure of assets should receive a personal financial reward connected to the value of a seizure.
- Transparency in the management of assets is critical, such as by means of an annual examination of the asset management authority by independent auditors. This inspection should include the examination and certification of financial records, which should be made public.

Similarly, the Common African Position on Asset Recovery advocates for creating and maintaining an agreed framework for management of recovered assets that is designed to ensure accountability and transparency and boost public confidence in the asset recovery process. It also encourages states to implement strategies to enhance transparency in the management of recovered assets, such as permitting monitoring of the use of recovered assets by interested and relevant stakeholders, at their cost and in accordance with domestic laws.

Keeping the public informed annually of the number of items seized each year and the aggregate value recovered from criminals, particularly in the context of corruption cases, can proactively build support for the asset recovery system and for law enforcement generally. Programa Nacional de Bienes Incautados

(PRONABI), the entity in charge of managing seized and confiscated assets in Peru, publishes an update of the assets under its administration every month. It also publishes data about the number of seized assets by region, type of asset, and type of crime they derive from or were involved with.⁸

Conversely, the failure to deal transparently with assets in the care of the asset management office can breed mistrust or, worse, raise suspicions of corruption. Civil society organizations have come to play an active role in advocating for greater access to information about the management and allocation of recovered criminal proceeds. The Federal High Court of Nigeria in Abuja recently ordered the federal government of Nigeria to provide Socioeconomic Rights and Accountability Projects (SERAP), a nongovernmental organization, with access to records relating to proceeds recovered from former military head of state General Sani Abacha and records on how these funds were allocated upon their return (see box 2.1).

Alongside transparency and accountability, the integrity of the asset management system should be beyond reproach. As a fundamental principle, individuals responsible for seizing and confiscating assets must be prohibited from receiving any personal financial gain related to such role and from using any seized assets for personal purposes. To prevent fraud and mismanagement, the financial records of the asset management body should be certified and its operations should be reviewed regularly by external auditors. The same safeguard should apply to asset managers and all authorities involved in the asset management process.

Failing to subject the asset management function to rigorous standards of accountability can have significant consequences. In Ukraine (see box 2.2), allegations of corruption destroyed public trust and confidence in the asset management function and led lawmakers to consider revoking its status as an independent government agency.

Finally, rules governing the funding of the asset management system should be clear, certain, transparent, and directed at restricting undue external influence. To preserve the independence of such systems, some jurisdictions have implemented measures to shield them from political interference. For example, in France, the asset management office (AGRASC) finances itself primarily through the interest earned from seized

cash and from the proceeds of assets it seizes and sells, as well as through the returns from seized funds invested in a loan and consignment fund. However, in cases where asset management offices have more autonomy and control over their own funding, rigorous independent and transparent accounting procedures are imperative.

2.2.2 Protection of Bona Fide Third Parties

Bona fide (legitimate) third parties, in the context of asset seizure and confiscation proceedings, are individuals who are not the primary target of the proceedings but are nevertheless affected by them. This includes individuals such as the spouse and children of the target of the investigation, especially in the context of seizure of a marital home, and tenants or other occupants of a seized property or employees of a company subject to a seizure order owned by the target. It also includes holders of mortgage bonds or lienholders.

Numerous international agreements⁹ provide for the protection of the rights of bona fide third parties in the context of asset recovery measures.

Box 2.1. Nigeria: The Registered Trustees of SERAP v. Minister of Justice and Attorney General of the Federation (suit FHC/ABJ/CS/407/2020 handed down on July 3, 2023)

SERAP, a nongovernmental organization working to promote transparency and accountability in Nigeria, requested that the Nigerian government disclose to it details of spending of about US\$5 billion in stolen public funds recovered from former military head of state General Sani Abacha since 1999. SERAP also requested details of specific projects carried out with the recovered proceeds, including the location and details of companies and contractors involved in the execution of the projects. In addition, SERAP sought copies of all international agreements reached in relation to the Abacha recoveries and details of the role played by World Bank and other similar actors in the disbursement of the funds.

After an unsatisfactory response from the government, SERAP approached the court to compel the government to make the information available to it under the Freedom of Information Act, stating that it was in the public interest for the information to be disclosed and that there is no basis for the government to be exempted from making the disclosure.

The government contended that SERAP had not demonstrated a special interest in access to the information it sought and asked the court to dismiss the applications on this basis. The court held that SERAP, a public interest organization, had legal standing to request the court to compel the government to provide the information without needing to establish a special interest in the information. The court rejected the government's blanket defense that the records were not in its possession. It found that the government had a duty to keep the information of expenditure of public funds and had a duty to provide the information when requested. The government was ordered to make the requested information available to SERAP.

Box 2.2. Ukraine: Criminal Cases against Former Leadership of Asset Management Office

The National Agency of Ukraine for Identifying, Tracing, and Managing Assets Derived from Corruption and Other Crimes (ARMA) was established in 2015 as part of Ukraine's efforts to combat corruption and improve transparency in government. The agency has the authority to investigate and seize assets obtained through illegal means and to manage and dispose of those assets in accordance with Ukrainian law. In Ukraine, there are several state-owned enterprises that serve as platforms for sales of property. One of them is the system for electronic trade of seized property (SETAM). In February 2019, the Ministry of Justice transferred the management of SETAM to ARMA.

In July 2022, the National Anti-Corruption Bureau (NABU) and the Specialized Anti-Corruption Prosecution Office of Ukraine exposed alleged systemic fraud involving seized property worth almost Hrv 500 million (approximately US\$17 million). They alleged that the head of ARMA colluded with others as part of an organized scheme to sell, at a reduced price through the SETAM online trading platform, property seized in criminal cases that had been handed over to ARMA for management.

It is alleged that the scheme operated in the following way: The seized property was handed over to ARMA under the pretext of executing the decisions of the investigating judge. ARMA officials, in turn, prepared justifications that the assets were difficult to manage and store, would quickly deteriorate, and might lose their value. Next, the property was assessed at a significantly reduced value by a company participating in the criminal scheme. The property was then put up for electronic auctions organized by SETAM, a state-owned enterprise. SETAM representatives participating in the conspiracy organized the bidding in such a way as to ensure the victory of a predetermined private company that was also part of the criminal scheme.

The participants in the scheme have been charged with selling seized property at an undervalued price at least four times in 2019, namely:

- Three plots of land in the Odesa region, purchased for the construction of shopping centers, realized at 18 times below the market value;
- 2.6 thousand tons of river sand in the Kyiv region, whose value was underestimated by more than six times the market value;
- More than 4.5 thousand tons of urea, at almost five times less than market prices; and
- Grain, groats, and oil crops, at four times less than the market value.

The sale of seized property at undervalued prices in these four instances alone resulted in damage of more than Hrv 426 million. Other instances of collusion are still being investigated.

Source: NABU press releases, July 2022 and April 2023, <https://nabu.gov.ua/news/novyny-nabu-i-sap-vykryly-korupciyu-pry-torgivli-areshtovanym-maynom>, <https://nabu.gov.ua/news/koruptc-ia-v-arma-organ-zatoru-zlochynno-grupi-obrano-zapob-zhnii-zakh-d/>.

Note: Hrv = hryvnias.

Article 31(9) of UNCAC enjoins states to ensure that confiscation measures do not prejudice the rights of bona fide third parties. The “G8 Best Practices for the Administration of Seized Assets” recommends that mechanisms exist for persons or entities with a relevant legal interest in seized property to apply to a court to modify a seizure order to permit the release of the property, subject to adequate protections (G8 Lyon/Roma Group 2005). Several Organisation for Economic Co-operation and Development (OECD) countries have made third-party protection a founding principle of their asset management system (box 2.3).

Third parties generally have the legal right to challenge an order that affects them, and many asset recovery laws have established procedures to resolve third-party claims expeditiously. In the early stages of the implementation of asset recovery laws, third parties were required to wait until the conclusion of the confiscation proceeding to assert their claims, but increasingly, third parties are being allowed to challenge seizure or interim orders as soon as they are affected by them. In some cases, asset management officers may be authorized to settle certain claims, such as when a third-party claim arises from tenants after the seizure of real property. A survey of 23 governments found widespread acceptance that third parties with legitimate claims should be given access to the proceedings and specific protections against loss of possession, control, and equity in seized assets (UNODC 2021).¹⁰

Asset management personnel must be knowledgeable about the rights of both targets and third parties. They may need to inform individuals in these positions about their rights and available options. Treating all individuals affected by asset management procedures with dignity and respect is not only a duty but also a wise strategy. The manner in which interested parties are treated during their interactions with asset management personnel can influence their willingness to cooperate with measures such as interim sales. If the sale of seized assets is necessary, obtaining the owner’s consent is usually preferable, especially if the item is unique, sentimental, or highly valuable. Resolving such situations without court intervention is always the preferred option and is more likely if the owner has confidence in the asset management system. In these circumstances, an asset management office that is seen to be impartial and acting independently of the interests of law enforcement tends to have better prospects of securing the cooperation of third parties.

If a confiscation order is denied, the asset management office is responsible for promptly returning the assets, or the value where an interim sale has occurred. In some cases, seized assets may have been sold while in the custody of the asset manager, in which case it is the responsibility of asset management personnel to ensure that the owners (including third parties) receive cash equivalent to the value of the sold assets as quickly as possible.

2.2.3 Cost Management and Efficiency

Cost management is paramount to an efficient asset management system. Computerized systems can significantly reduce the costs of

Box 2.3. Legal Provisions That Protect Third-Party Interests

In South Africa, section 20(5) of the Prevention of Organised Crime Act 121 of 1998^a provides that "A court shall not determine the amounts which might be realized as contemplated in subsection (1) unless it has afforded all persons holding any interest in the property concerned an opportunity to make representations to it in connection with the realization of that property."

As a rule, third parties with less than an ownership interest or only an unsecured claim can intervene only at the realization or enforcement stage and not at the restraint stage of proceedings. In interpreting the Prevention of Crime Act, the South African constitutional court in *Fraser v. ABSA Bank Limited* (66/05) [2006] ZACC 24 found that a court had discretion to permit any creditor who applied to intervene to join restraint proceedings and to then grant an order that was fair under all the prevailing circumstances.

Similarly, in the United Kingdom, prior to the introduction of section 10A (s10A) of POCA 2002 (by way of the Serious Crime Act 2015), third parties had no right to make representations concerning the extent of their interest in particular assets prior to enforcement proceedings. The new *s10A Determination of extent of defendant's interest in property* provided:

- "(1) Where it appears to a court making a confiscation order that—
- (a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and
 - (b) a person other than the defendant holds, or may hold, an interest in the property, the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.
- (2) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.
- (3) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—
- (a) the realisation of the property, or the transfer of an interest in the property, with a view to satisfying the confiscation order, or
 - (b) any action or proceedings taken for the purposes of any such realisation or transfer."

In *R v. Forte and another* [2020] EWCA Crim 1455, the UK court held that a litigant under s10A, having been convicted of nothing, should not be exposed to penal consequences. Section s10A(2) requires that the third party must be given reasonable opportunity to make representations, as early as the investigation stage; the third party may apply to be separately represented and call evidence to establish ownership.

a See Government Gazette, Republic of South Africa, Dec. 4, 1998, https://www.gov.za/sites/default/files/gcis_document/201409/a121-98.pdf.

operation. For instance, computer-based solutions should be considered for recordkeeping purposes, as they can help streamline processes, thus increasing efficiency and reducing the risk of error. In 2022, Romania introduced the Romanian Asset Recovery and Management Integrated System (ROARMIS), a centralized database that enhances interinstitutional cooperation among all institutions dealing with seizure, management, interlocutory sales, and reuse of criminal assets. The system will offer information on the various stages of the asset recovery process, from the early identification and tracing phases, to seizing proceeds of crime or other types of assets, to the final stage of executing a special or extended confiscation measure, damage repair, concluding international asset sharing agreements, or the social or public reuse of assets. It will, *inter alia*, offer information on the management cost of individual assets, thus contributing to the efficiency of the process.

Rules governing the administration of assets should also contribute to managing costs. Ideally, the asset management body should be afforded the legal or procedural opportunity to sell seized items that can only be stored at a disproportionate or excessive price. Ideally, the legal framework should permit the destruction of property that has little or no value, especially if the cost of storage and/or management outweighs the value of the asset. The consent of the owner to destroy valueless property should be obtained first, as valueless property may still have significant sentimental value to the owner. To incentivize the owner, the law should give the owner the choice of consenting to destruction (or interlocutory sale) of the asset and shouldering the costs of maintaining the asset.

Asset management personnel must have the necessary information available to them to inform decisions about interim sale and destruction, and they need to advise the relevant authorities to employ these mechanisms in a timely manner.

Finally, efficiency of the asset management system requires continuity. Where the system relies on government funding, predictable and adequate financing is critical.

2.3 Legal Foundation

Establishing a functional asset management system begins with an appropriate legislative framework and accompanying regulations that enable efficient, transparent, and flexible asset management. This requires clear legislative provisions defining the roles and responsibilities of the asset management personnel, allocation of an appropriate budget, and provision for the appointment of appropriately skilled personnel, including appointment at the appropriate level with the necessary decision-making authority to manage and oversee a system that could handle a large portfolio of assets on behalf of its owners and/or the state.

It is important that the law empowers the asset management office to preserve, maintain, and even enhance the economic value of assets under its control, although increasing the value of assets is not necessarily the

primary goal of an effective asset management system. The law should provide for authority to conduct interim sales or destruction of unviable or hazardous assets and interim use and to engage private sector contractors to facilitate cost-effective asset management.

If the asset management office is authorized to participate in asset tracing, the law should explicitly grant it the necessary powers to access, either directly or indirectly, information about assets, preferably without the need for a court order.¹¹ This should include access to confidential information held in government ownership databases, including bank account information held by financial intelligence units, which is also essential for effective support in pre-seizure planning. Alternatively, if the asset tracing and asset management are allocated to different bodies, the law should provide for proper mechanisms of coordination between these bodies.

2.4 Common Structures

States have responded in a variety of ways to the challenge of managing assets that have been seized on the basis that they are suspected of being derived from or used in crime and the challenge of disposing of them once a final confiscation decision is made. The approaches adopted fall into the following broad categories:

- In many jurisdictions, law enforcement agencies, such as the office of the public prosecutor or police agencies, are responsible for managing these assets along with their other duties.
- In others, public sector entities with experience in managing and disposing of state-owned assets or public bodies responsible for dealing with disputed property, such as those that regulate insolvencies or bankruptcies, manage and dispose of criminally derived property.
- Some jurisdictions have one body responsible for managing seized property pending a confiscation decision and another for disposing of the property once it has been declared confiscated to the state, often in the absence of a central coordinating asset manager at the national level driving asset management.
- Increasingly, states are creating or designating a separate entity dedicated solely to managing both seized and confiscated property. This is internationally referred to as an AMO where the asset management function is typically separated from traditional law enforcement duties.

Regardless of the location and structure of the office, those responsible for managing and disposing of seized and confiscated assets must be able to withstand intense public scrutiny. Integrity and transparency throughout the asset management process are critical. If reports that reveal poor management of seized property or show that confiscated property is being handled in violation of court orders emerge, the credibility of the asset recovery system may be seriously damaged. States can enhance

the transparency and accountability of their systems by having an effective legal framework, especially one which provides for effective oversight of the asset management system; adopting transparent policies and procedures; and ensuring compliance with all relevant policies, procedures, court orders, and laws.

The primary objective of an effective asset management function is to preserve the value of seized assets pending a confiscation decision. Once a final confiscation decision has been made, the objective is to ensure full compliance with the court order or to ensure that the recovered property is dealt with in accordance with the policy choices expressed in the asset recovery legal framework.

Asset management systems have developed differently in various jurisdictions. A survey conducted by UNODC shows that only 9 of 23 responding governments had some form of functioning asset management office (UNODC 2021).

An EU study (Vettori, Kolarov, and Rusev 2014, p. 9) recommended that EU member states adopt a specialized, centralized approach to the disposal of confiscated criminal assets. A centralized institution, with professional personnel, that advises and provides guidance and training to other national agencies with roles in the preservation, confiscation, and disposal of criminal assets can contribute to the more effective disposal of assets. The most recent EU recommendation¹² includes a structure that either directly manages frozen and confiscated property or provides a coordination role, supporting and offering expertise to other competent authorities responsible for managing frozen and confiscated property.

Ideally, the asset management structure should be decided after the jurisdiction's existing capacities and strategies are evaluated. The structure adopted should build on the jurisdiction's existing strengths and improve on weaknesses in its asset management framework. Unless the proposed asset management structure can improve how existing agencies are handling asset management challenges, it should not assume responsibility for that function. This ensures that the capacity to manage assets can grow as demand expands, leading to a structure that functions effectively within the jurisdiction's asset recovery ecosystem and at an appropriate cost.

The choice of structure will also depend on factors such as the size and complexity of the asset portfolio, the resources available, and the legal and regulatory framework in the jurisdiction.

2.4.1 Asset Management Function within a Law Enforcement Agency

Typically, in the early stages of development, jurisdictions adapt existing law enforcement infrastructure (for example, police or prosecutorial agencies) used to manage seized evidential material in criminal cases to also handle seized assets. Private law mechanisms, such as court-appointed trustees, receivers, *curatores boni*, or judicial managers, may also be used to manage and dispose of seized and confiscated property. At the disposal stage, mechanisms for collecting criminal fines and existing public service

entities responsible for disposing of government property are employed, and the proceeds from the sale of confiscated property are deposited into general treasury accounts.

As asset recovery systems develop, challenges arise, particularly for law enforcement agencies, including the following:

- Increased workloads that strain law enforcement responsibilities and functions
- Inadequate storage facilities for seized and confiscated assets
- Difficulty maintaining accurate and reliable data on the location, ownership, value, and status of seized and confiscated assets
- Difficulty maintaining seized assets in good condition;
- Lack of capacity to effectively contract and manage specialized private sector professionals to value and deal with unique or unusual assets, often resulting in excessive contractor fees
- Lack of experience with establishing social reuse programs or allocating grants to projects funded from confiscated property

Nonetheless, many jurisdictions, including Belgium,¹³ Brazil, Thailand, and the United States, have opted to locate and retain the asset management function within law enforcement or the prosecuting authority (UNODC 2017b, 13).¹⁴ In some instances, the asset management function has independent reporting lines and funding, separate from the rest of the law enforcement agency or prosecuting authority, to guarantee it a measure of autonomy.

If the asset management function is within a law enforcement agency, it is important to distinguish between the role of law enforcement in asset recovery and the asset management role. The asset management function provides support to investigators, prosecutors, and the court by offering quality information and advice from an asset management perspective. The responsibility of the asset management function should be to advise on cost-benefit decisions from a purely financial perspective. In common law jurisdictions, it is also important to maintain separation between the use of information obtained from an accused person about their assets by asset managers and information obtained by law enforcement, as the former may be subject to substantive rights against self-incrimination and use-immunity rules.

If law enforcement is involved in the seizure and confiscation of assets and then allocates the same assets to itself for official use, even for legitimate operational reasons, it can create the perception that law enforcement is acting for ulterior purposes, which undermines the legitimacy of the asset recovery system.

2.4.2 Asset Management Function within Other Existing Public Agencies (Not Related to Law Enforcement)

In certain jurisdictions, such as Australia (at the Commonwealth or federal level of asset management), Mexico, and New Zealand, an existing public sector entity with experience in managing and disposing of assets rather than law enforcement agencies has been assigned the responsibility for managing seized and confiscated assets (UNODC 2017b, 14). In New Zealand and Australia, this responsibility was given to the body responsible for regulating insolvencies and liquidations, while in Mexico, it was assigned to a body responsible for managing the sale of public assets, including the privatization of state-owned enterprises. These structures offer several benefits, including avoiding the appearance of conflicts of interest between law enforcement and the owners of seized property believed to be instruments or proceeds of crime, accessing existing government expertise and resources, and economies of scale derived from managing a large portfolio of assets.

However, in the Australian states and territories, equivalent functions are variously performed by a combination of the law enforcement agency (such as in the state of South Australia), the government department responsible for collection of fines and seizure of property under warrant to satisfy civil judgment debts (for example, the state of Victoria), or a separate government department responsible for trustee services (for instance, in Queensland), among other assignments.

2.4.3 Independent Asset Management Office

Asset recovery systems that result in the seizure of a large quantity of assets and significant sums of money can justify increased investment in capacity and resources to set up a professional entity dedicated exclusively to this function. In such cases, they build up experience in management and disposal of assets incrementally, and these experiences inform the establishment of an autonomous asset management institution, with professional staff, a dedicated budget, and appropriate governance mechanisms, policies, and procedures and independent auditing.

An increasing number of jurisdictions, including Canada, France, and North Macedonia, have established independent asset management offices dedicated solely to the management of seized and confiscated criminal property (box 2.4). This approach is deemed necessary only when the number and value of recovered assets have increased to a level that justifies the associated costs. These jurisdictions typically have developed experience in managing and disposing of assets, which informs the establishment of an autonomous asset management institution. Similarly, other jurisdictions such as Colombia, Honduras, and Peru have separated the management and disposal of seized and confiscated assets from the broader asset recovery investigative and prosecutorial functions.

These asset management offices have professional staff, a dedicated budget, and appropriate governance mechanisms, such as policies and procedures and independent auditing. However, self-standing,

Box 2.4. France: AGRASC—An Example of a Well-Established Self-Standing Asset Management Office

In 2011, France created the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC), which functions under the supervision of both the Ministry of Justice and Freedoms and the Ministry of the Budget, Public Accounts and State Reform. Its primary function is to provide technical and practical assistance and advice to members of the judiciary, the Public Prosecution Service, investigating magistrates, trial judges, and investigators on the enforcement of asset recovery laws and on the seizure of assets (including real estate, bank accounts, receivables, and businesses). AGRASC is not the only agency in France responsible for the management of seized and confiscated property, but it has a monopoly over all cash seizures and real estate seized in criminal matters and operates a bank account which receives transfers of all seized cash, bank accounts, and proceeds from the pre-confiscation sale or disposal of assets it has been assigned to manage by the courts. AGRASC sets the process of sale of real estate in motion by giving power of attorney to a notary and takes charge of the management of the real estate asset until the sale is concluded. AGRASC has legal personality and can enter into contracts with the private sector. It is also responsible for returning assets if no confiscation order is made and makes payments to the state and to victims if a court makes a confiscation order.

Each year, AGRASC publishes an online report (AGRASC 2022) on its activities to enhance transparency and to showcase its successes, thus building support for the asset recovery program.

autonomous, and self-financing asset management offices are not yet common, but rather a consequence of evolving systems.

2.5. Functions of the Asset Management Office

Regardless of the asset management structure selected by a jurisdiction (boxes 2.5 and 2.6), the functions typically include the following:

- Inventory and recordkeeping: keeping detailed records of the nature, condition, location, value, ownership, stage in the confiscation process, and other significant features of restrained and realized property greatly facilitates the efficient management of seized assets (see section 2.8).
- Asset inspection, appraisal, and valuation expertise or services.
- Storage and transportation facilities: as discussed in chapter 6, different asset classes have different storage needs that may often be quite specialized. In the early days of an asset management program, facilities used by law enforcement agencies, investigative judges, or the courts can be used or procured on an asset-by-asset basis. As the asset

Box 2.5. Nigeria: Asset Management Functions Set Forth in Legislation

In Nigeria, a new Proceeds of Crime (Recovery and Management) Act of 2022^a has recently been adopted. It sets out the following asset management functions:

- Take over and assume responsibility for the proper and effective management of properties forfeited to the federal government of Nigeria
- Set standards to be applied in the handling of properties forfeited to the federal government of Nigeria
- Ensure accountability in the management of all properties forfeited to the federal government of Nigeria
- Recommend training on the management of the proceeds of crime and related matters
- Appoint private asset managers and ensure that they are properly bonded and insured
- Establish and maintain asset management and disposal systems and lists of approved auctioneers and valuers, and issue instructions for the realization or security of assets while ensuring fair process
- Establish and maintain a central database of all assets recovered by relevant organizations
- Work with the federal Ministry of Justice to negotiate the return and management of all assets seized from foreign countries on behalf of the federal or state government or any other victim or for the benefit of Nigerians and maintain statistics on the amounts recovered and managed.

a Federal Republic of Nigeria Official Gazette 92 (109), Government Notice No. 69, <https://placng.org/i/wp-content/uploads/2022/05/Proceeds-of-Crime-Recovery-and-Management-Act-2022.pdf>

recovery program expands, storage capacity can be increased either by acquiring it in-house or by procuring private sector services.

- Procuring specialist skills for recovering greater value, especially for complex assets (including the cryptocurrency market).
- Procurement processes to guarantee transparency and integrity (see section 4.5).
- Finance and accounting: the interim management of assets requires a budget that can be accessed from the outset, ideally from finally confiscated funds from previous successful cases, rather than from temporarily seized property. Programs can be self-sufficient and can fund victim compensation or the general treasury or other specific government programs, but that is generally achieved only with time and good policies (see sections 2.6 and 4.5.2). External auditing of accounts

Box 2.6. Romania: Asset Management Office Functions

In Romania, the National Agency for the Management of Seized Assets (ANABI) is involved in facilitating international cooperation in the tracing and identification of proceeds from crime, which are potentially subject to freezing, seizure, or confiscation orders; securing management of movable assets and selling movable and immovable assets where the law allows; publishing updated information on its website about each immovable asset confiscated in criminal proceedings (including its legal status, its location, pictures, the date when it was transferred to the state's private ownership, and other relevant data); overseeing the reuse of confiscated immovable assets (for example, the free-of-charge transfer to public institutions or nongovernmental organizations for social or public interest objectives); and managing the national integrated electronic system for criminal assets that ensures that judicial institutions have access to information regarding the management and disposal of assets dealt with by that agency.

A relevant feature of the system in Romania is the focus on managing high-value assets. The law that regulates the powers of ANABI also sets thresholds for the value of assets that may be sent to the agency for management until the end of the case. The law stipulates that ANABI can manage only movable assets with individual values of more than €15,000 and stocks beyond €300,000. This has as a consequence the orientation of the judicial practice toward high-value assets. Only for such assets are involving a specialized agency and spending public resources both economically and legally justified. Of course, there is no threshold for interlocutory sales, the agency having the mandate to sell both movable and immovable seized assets, regardless of their value.

as well as preparation and publishing of information about the assets managed at intake and their disposal must be ensured.

- Pre-seizure advice: pre-seizure planning is the most important part of the asset management process, and it is one of the key aspects in which asset management offices should specialize; it is an expertise which should be built in-house and not delegated.
- Ongoing maintenance of seized property.
- Involvement at national level in driving and setting asset management standards in the form of legislation, policy, and procedures.
- Coordination among the various stakeholders involved in aspects of asset recovery, both domestically and internationally. This is especially important in multijurisdictional cases involving international returns of confiscated assets.
- Tracing assets for the enforcement of orders (by accessing ownership databases and registers).

2.6 Financial Management

Managing seized and confiscated assets can be expensive. Demonstration that the proceeds from the disposal of confiscated assets can exceed the cost of managing them can motivate governments to commit funds up front to support the system. This requires having available accurate and reliable data on the costs of managing assets and the values recovered from their realization after confiscation. However, while the goal of self-funding is the optimal scenario for an asset management office, the office should also communicate that there may be situations in which other law enforcement benefits of managing assets trump the costs incurred. For example, effective asset management is part of demonstrating that action is being taken against corruption and can therefore have a deterrent effect on further corruption or that asset management is part of an effective anticorruption infrastructure and should therefore be funded as a core part of the anticorruption architecture.

An asset management office needs funding to support its activities, including the following:

- Operating costs (personnel, equipment, offices, secure storage facilities, travel costs, and accessibility costs)
- Establishing and maintaining an electronic database for inventory
- For restrained assets left in the custody of the owner or possessor, monitoring to ensure compliance with the conditions imposed by the court
- Storing assets (even those not requiring active maintenance to preserve value) in a secure location
- Maintaining assets, including more complex assets such as yachts and aircraft, and operating businesses requiring specialized care to preserve value
- Engaging private sector contractors, such as appraisers and auctioneers
- Preparing an asset for disposal (for example, cleaning, publicity, and auction costs)
- Defending litigation claims against seized assets, when that responsibility lies with an asset management office
- Defending litigation claims for damages by owners in the event that the assets are returned with a perceived loss of value;
- Settling litigation claims for damages when the court orders the return of an asset to the owner and the asset has decreased in value

When an asset management office is first established, these costs should be anticipated and budgeted for. There is a degree of uncertainty, as some of these costs can depend on variables outside the control of the asset

Box 2.7. France: Self-Funded Asset Management Office

In France, the Agency for the Management and Recovery of Seized and Confiscated Assets (AGRASC) is funded mainly by the interest earned on cash seized and interest earned on the proceeds of the sale of seized assets. While AGRASC has managed to be self-funded since 2012, that was not always the case.

The initial budget for AGRASC was drawn up on the basis of forecasts that were speculative (and which proved too optimistic); the revenue from the sale of confiscated property was initially less than expected, and the shortfall was covered with subsidies. However, two years into its operation, AGRASC became fully self-funded, and today it pays millions of euros to the Government Revenue Fund and to other funds, such as the Drug Fund.

management office. Despite the challenges, the asset office requires predictable, continued, and adequate financing for all phases of the asset management life cycle.

For an example of a self-funded asset management office, see box 2.7.

There are various funding options available for the asset management function, including revenue allocations from the national budget, proceeds from the sale of confiscated property, interest and income earned from investments made with seized cash and proceeds of interim sales, fees earned from the management of productive assets (for example, rentals of commercial property or operating businesses), and fees earned by staff of the asset management office for services rendered in the management and disposal of seized and confiscated assets.

However, at the end of the day, the government is responsible for ensuring that sufficient funds from the general budget are allocated to the asset management function, even if a dedicated fund is established to receive proceeds from confiscated property from which asset management expenses can be defrayed. Regardless of the funding source, measures need to be in place for the asset management office to access funds quickly for extraordinary and unanticipated expenses. The challenges that can arise from a lack of adequate funding for asset management expenses can significantly hamstring the asset recovery system, as seen in the example from South Africa described in box 2.8.

Indeed, the costs of managing and disposing of seized and confiscated assets can be a major difficulty for governments, particularly where other budgetary priorities prove more urgent. Many jurisdictions have enacted legislation providing that the asset recovery capacity be funded from recovered proceeds, in the hope that these bodies become self-funding over time. While some have achieved self-funded status within a short period of operation, in most jurisdictions this is a long-term objective. Only a handful of jurisdictions have so far achieved this status, including Canada, France, and the United States.

Box 2.8. South Africa—Challenges of a Lack of a Reliable and Adequate Funding Source

The Asset Forfeiture Unit in the National Prosecuting Authority of South Africa obtained preservation orders for a coal mine believed to have been acquired with the proceeds of corruption (state capture).^a The estimated market value of the mine, which holds a valuable coal export allocation, is R 3.15 billion, while the forced sale value is estimated at R 2.67 billion. Finding a contractor to take on responsibility for managing an asset of this worth proved extremely challenging.

It was difficult especially because under the South African Prevention of Organized Crime Act (POCA),^b in terms of which the preservation orders were obtained, the *curator bonis* (usually a private sector service provider) would be able to recover expenses and be paid a fee for services rendered from the proceeds of the sale of the asset only once a final confiscation order is made. This process could take several years to finalize. The inability to pay interim expenses or any fees for several years while expecting the contractor to bankroll all expenses incurred in managing the asset meant that there were very few contenders for the appointment.

A curator bonis was ultimately appointed by the court^c to provide a proper valuation of the mine and to find a purchaser for the asset at fair value. The court was asked to authorize interim payments of the costs (not fees) of the contractor, and the Asset Forfeiture Unit applied to the Criminal Asset Recovery Account, which received all proceeds from the sale of forfeited property, to cover these costs. Legislative authority to pay interim expenses, if not fees, and availability of an adequate budget for this would have assisted the search for suitably qualified contractors.

- a See a media statement from the Asset Forfeiture Unit in South Africa at <https://www.npa.gov.za/index.php/media/eating-state-capture-elephant-one-bite-time>.
- b Prevention of Organised Crime Act 121 of 1998 (available at https://www.gov.za/sites/default/files/gcis_document/201409/a121-98.pdf) provides that the High Court that made the restraint order “may make such order relating to the fees and expenditure of the curator bonis as it deems fit, including an order for the payment of the fees of the curator bonis—(i) from the confiscated proceeds if a confiscation order is made or (ii) by the State if no confiscation order is made.”
- c Incidentally, the curator bonis resigned following death threats soon after he uncovered more potential theft and fraud in the operation of the mine. See <https://www.news24.com/fin24/companies/death-threats-wont-kill-the-states-case-against-former-gupta-mine-says-npa-20230117>.

In Canada, the Seized Property Management Directorate (SPMD) recovers all its operational costs from the proceeds of the sale of confiscated property.¹⁵ All costs (both operational and overhead) are deducted from the realized property. Thereafter, the net proceeds of the sale are shared domestically and internationally with jurisdictions that were involved in the investigation.

In the United States, the Federal Asset Forfeiture Program manages the Department of Justice Assets Forfeiture Fund. Seized cash and proceeds of pre-confiscation sales and disposals from seized property are deposited in the Seized Asset Deposit Fund. These funds are considered nonpublic monies and are not available for government purposes. They cannot be

used to defray operational expenses until a final forfeiture decision is made. Forfeited funds can be used for *forfeiture operations expenses* (asset management and disposal, third-party interests, case-related expenses, training, printing, contracts to identify forfeitable assets, and awards based on forfeiture) and for *general investigative expenses* (awards for information, purchase of evidence, and joint law enforcement operations). The Department of Justice retains 20 percent of the forfeited proceeds as overhead expenses, while the rest is shared with state and local law enforcement agencies that assisted in the forfeiture process (based on the number of work hours). This is done under strict auditing controls that limit how such funds can be sent to certain law enforcement agencies. The size of the fund has grown considerably over the past 10 years. Annual net deposits increased from nearly US\$580 million in 2005 to US\$4.5 billion in 2014. Total assets as of September 30, 2022, total US\$5.225 billion (US Department of Justice 2023).¹⁶

In Mexico, the asset management office (Instituto para Devolver al Pueblo lo Robado [INDEP]) receives funding from three sources. The first is the federal budget, which includes fiscal resources to cover operating expenses such as personnel, materials, and supplies, as well as unexpected costs. The second comes from the disposal of assets under INDEP's administration, for which it may charge up to 7 percent of the proceeds to cover administrative and sale expenses.¹⁷ Finally, as a third source of funding, INDEP can lease out assets and charge fees for this service.

The asset recovery office should have a strong finance and accounting function irrespective of its funding sources. Information systems should be in place to track all expenses and revenue associated with each seized and confiscated asset. The asset management office must have enough trained and specialized individuals to oversee the finance and accounting functions. The structure and location of the office may affect how this is achieved, but it is crucial that the finance and accounting unit understand the unique needs and nuances of managing and disposing of forfeited assets, which are distinct from other government functions. These issues are discussed in greater detail in chapter 5 and in other publications (UNODC 2017a; UNODC 2017b; Greenberg et al. 2009, p. 90; World Bank 2009). The international community, through various international and regional organizations, has also supported initiatives to provide technical assistance and funding in the asset recovery process.¹⁸

It is important for the asset management office to demonstrate what can be accomplished with limited resources, but it is even more important to meticulously account for the program's expenditure and the assets in its care. The more transparent the asset management office is about these issues, the more trust it will gain. Failure to account for assets or mismanagement of accounts will have the opposite effect.

2.7 Policies and Procedures

Effective asset management requires clear and comprehensive policies and procedures to ensure operational efficiency and maximization of value at disposal. Comprehensive policies provide transparency and accountability for the asset management office, which are essential for maintaining public support. They can also serve to protect asset management personnel from allegations of improper conduct (for example, with regard to interim use of a seized asset [see section 4.4]) since the personnel can justify their actions with reference to established policies. For these reasons, it is preferable to maintain written manuals and policies to guide practitioners through their activities, as well as internal and external audit provisions to vouch for good management and integrity.

This is especially true for pre-seizure planning. Making checklists and procedures available can help law enforcement agencies avoid seizing assets with no value or with disproportionate liabilities, which could ensure significant cost savings. However, despite sound advice from the asset management office, it may be that law enforcement officials persist in the decision to seize. It helps to have the advice documented to protect the asset management personnel from criticism when the asset is ultimately realized at a loss. In Belgium, for example, the asset recovery office serves as a help desk for law enforcement and prosecution to determine which assets are worth seizing. However, sometimes prosecutors or investigating judges nevertheless seize, regardless of the costs.

Sound policies and procedures are also needed to ensure that the inventory is up-to-date and audited. Ideally, the agency would complement the system with an annual or biannual inventory done by a third party. In this case, another government agency or entity, unrelated to the confiscation process, makes a separate inventory to ensure transparency and accountability. The operations of whichever agency manages seized assets must always be subject to adequate oversight, including internal controls and external audits.

To effectively manage the inventory of assets, it is important to ensure that the items recorded in the system exist. This can be achieved through regular physical inspections, which should be conducted on a monthly, quarterly, or other predetermined basis. During these inspections, all assets stored by the agency or third-party vendors should be checked to confirm that they are in the correct location and in good condition. Contracts with vendors should include provisions for regular announced and unannounced visits to their facilities to ensure compliance with storage and maintenance requirements.

Asset management offices should have clear policies in place for inventory management, regardless of the complexity of their systems. These policies should include daily updates to the inventory and accurate accounting of all expenses related to each asset. See also section 4.5.2 for a discussion of additional topics for contracting private sector asset managers that should be addressed in the asset management office's policies and procedures manual.

2.7.1 Seizure Thresholds

Some asset management offices, in countries like the United States, have explicit minimum thresholds in place before asset seizure can be authorized (that is, clear guidelines stating that the system will not seize assets worth less than a specified amount for each asset class). For example, vehicles worth less than a specified amount should not be seized because the asset management office is likely to spend more on maintaining this asset than it could recover upon disposal. A clearly worded and well-publicized policy can prevent law enforcement agencies from straying from the general rule of the minimum threshold.

There should be the discretion to depart from thresholds in appropriate cases. However, as a rule, it is not advisable to pursue confiscation of assets that hold limited value, depreciate quickly, or are burdensome to maintain, especially if the law does not permit sale of the asset prior to a confiscation decision. When officials are saddled with managing assets of insignificant value, the asset management office risks becoming overburdened and unable to function effectively.

Establishing minimum thresholds can help raise awareness about the cost implications of seizure decisions. While there are other law enforcement considerations at play in the seizure decision, a minimum threshold policy can be a useful mechanism for making confiscation cost-effective. Ideally, thresholds should not be codified in a statute because there should be flexibility to adjust them on the basis of law enforcement interests or a changing economic climate. Accordingly, thresholds are best left to the executive branch (or other competent authority) through the issuance of clear policies, rules, or regulations. Pre-seizure planning guidelines should be implemented to assist in the cost-benefit analysis of a possible seizure, as well as to prevent problems related to the seizure or management of certain types of assets.

However, minimum thresholds may not be appropriate in the early stages of implementing asset recovery measures, so as not to discourage law enforcement officers from identifying assets for confiscation. In these cases, while it remains important for the asset management office to be aware of the unit cost of managing an asset and to use this value to inform pre-seizure planning, it may not be advisable to make this information public. As the volume and value of assets increase, publishing a minimum threshold may be necessary.

2.8 Asset Inventory Systems

One of the most important contributions to a country's asset recovery system that an asset management office can make is to establish and maintain accurate, reliable, and up-to-date information about the assets that are subject to seizure, restraint, confiscation, and disposal. This is likely the most effective way to establish trust and confidence in other agencies involved in asset recovery.

Despite the importance of this function, only 4 of the 23 responding jurisdictions in the 2021 UNODC survey indicated that they operated centralized databases (UNODC 2021). Several jurisdictions reported certain IT and manual systems that are utilized by offices and can be accessed by law enforcement agencies in certain circumstances, but these are not truly centralized systems. The first point of focus for any system may well be the creation and funding of a database and case management system so that all assets can be recorded, providing transparency to the process for taxpayers and general external audiences. Initially, a centralized database can be as simple as a spreadsheet managed by a central agency with the responsibility of maintaining data and sharing information and statistics with relevant parties. Ideally, however, an electronic solution should be implemented. For this purpose, private sector providers can provide IT solutions tailored to any requirement. The resulting efficiencies of this solution generally far outweigh its cost.

Various international and regional bodies have recognized the importance of accurate and reliable data in the context of asset recovery and the management of seized and confiscated assets within the system.

For example, the G8 “Best Practices for the Administration of Seized Assets” (G8 Lyon/Roma Group Criminal Legal Affairs Subgroup 2005) recommends that “States should consider the use of information technology (IT) systems for the administration of seized property. Appropriate financial and property administration IT systems can, for example, be extremely useful for tracking and managing inventory or for meeting expenses associated with seized property as well as for maintaining a transparent and accountable system. States may also wish to use such IT systems for the administration of confiscated property.”

In addition, recommendation 33 of the Financial Action Task Force (FATF) guidance (FATF 2023) addresses the importance of data and statistics to measuring the effectiveness and efficiency of anti-money laundering/combating the financing of terrorism (AML/CFT) systems, advising jurisdictions to include statistics on “... property frozen, seized and confiscated.” Recognizing the many challenges jurisdictions face in producing sufficiently comprehensive and reliable statistics, FATF also issued a Guidance Note on AML/CFT-Related Data and Statistics (FATF 2015). As the asset recovery system and the asset management function within that system are a key component of FATF’s review, a good starting point is understanding and improving the data-capturing and measurement systems already employed in the jurisdiction for this purpose. The FATF Guidance Note sheds light on data collection, management, and use from a jurisdiction-wide perspective.

The FATF Guidance Note provides specific guidance on measurements to assist with reporting under Immediate Outcome 8 (FATF 2015) which requires jurisdictions to measure the extent to which proceeds and instrumentalities of crime are confiscated. The following measurements are a helpful starting point:

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- Number of criminal cases where confiscation is pursued
 - Value of proceeds of crimes, instrumentalities, or property of equivalent value that was confiscated, broken down by foreign or domestic offenses
 - Value of falsely declared, undeclared, or disclosed cross-border currency and bearer negotiable instruments confiscated
 - Value or proportion of seized or frozen proceeds that is ordered for confiscation
 - Value or proportion of confiscation orders realized
 - Value of criminal assets seized or frozen
 - Amount of proceeds of crime restituted to victims, shared, or returned

At a regional level, the Organization of American States (OAS) has been very active in guiding and supporting member states on the issue of asset management and, more specifically, data management. The OAS published a work on asset management and best practices in Latin America (OAS 2011).

The EU¹⁹ followed suit with a similar publication (Di Nicola, Vettori, and Angheben 2018) aimed at mapping existing databases and/or data management systems for seized assets in the EU. This report identified strong and weak points, considering the needs of EU stakeholders in this area. The ambitious outcome of the project is to develop the software prototype of an innovative data management system for seized assets (PAYBACK DMS prototype) in the EU, pilot test it in selected countries, refine it, and disseminate the project's findings.

Although a newly established asset management office may begin with a simple spreadsheet, relatively soon a more comprehensive system will be required. Even smaller jurisdictions, once a program starts evolving, can have 100 real properties or 200 to 300 vehicles, and keeping track of them requires a well-thought-out system. With good confiscation legislation, a jurisdiction can start building a confiscated asset inventory very quickly.

It can be extremely costly to establish and maintain an electronic database that captures information about the location, ownership, and status in the asset recovery process and maintenance, storage, and other expenses associated with the care of an asset. However, this expenditure is critical for monitoring compliance with the court's order and the policies and procedures of the asset management office and for managing the asset in a cost-effective and efficient manner.

In 2021, Belgium introduced a new system, PacOs. It is a police-driven application used to manage evidence digitally with barcodes. At the end of 2020, PacOs covered 55% of Belgian territory. The application was deployed at the national level in 2021 at both the Integrated Police level and the Justice level. In 2023, the entire Belgian territory is covered. It is worth exploring attachment of the asset inventory management function to an already existing database to save costs.

2.8.1 Tracking Inventory

The core of the management stage in any complex system is a good platform to monitor its inventory of assets (that is, a central system showing, at any given time, what assets the system holds, where they are located, who is responsible for their storage and maintenance, their estimated valuations, and what has been paid for individual maintenance and storage costs). Ideally, the asset management system has a software system for such purposes that tracks each asset in custody, including an accounting feature to upload the expenses for each asset.

The information in the system must be audited and shared as transparently as possible. Developing this sort of software might also involve contracting a specialized firm to design a tailor-made solution, and there are already companies providing this sort of service. This also implies funding the asset confiscation system accordingly. However, if properly and efficiently run, the process should eventually earn enough to fund itself, compensate victims, and support government or social benefit programs.

Without this type of software, the probability of assets losing value or disappearing outright due to corruption or mismanagement increases and reputational harm to a national asset recovery system may result. For example, in 2022, there were media reports that thousands of assets from the Colombian asset recovery program were not accounted for. According to Reuters, “Colombia has seized assets worth 25.7 trillion pesos (\$5.6 billion). Authorities will establish a technical panel to locate 19,587 assets seized from drug traffickers including large farms, houses, luxury cars, gold, aircraft, boats, and cash.”²⁰ The issue had enough importance to merit presidential involvement.

The US Department of Justice, through its asset managing agency, the US Marshals Service, routinely manages more than US\$2 billion in assets through a database called the Consolidated Assets Tracking System.

It is also important that the system keep track of the management and maintenance costs to ensure that they do not exceed the value of the assets and to allow for reimbursements when appropriate. This enhances accountability, allows for proper government accounting and auditing requirements, facilitates the compensation of victims, and helps to monitor assets made available for reuse. The separation of duties and responsibilities among various law enforcement bodies is also important to enhance transparency.

For an example of an inventory system, see box 2.9.

2.8.2 Information Sharing

There are two aspects to information sharing discussed below. The asset management office shares information on its activities with the public, particularly relating to the assets it administrates, and may also need to share information securely about assets with investigators, both domestic and abroad.

Regarding sharing information about its operations with the public, with readily available and reliable data, the asset management office can provide transparency in its operations and thereby establish greater

confidence and trust in the asset recovery system. Examples of countries that publish statistics on the activities of the agency for the management of seized and confiscated assets online are Italy²¹ and Mexico.²² On the Mexican SAE website, it is possible to access statistics on assets that have been received, are in custody, and have been disposed of, divided into movable assets and real estate, as well as information on the agency (director, structure, organization, offices, and finances). In Italy, the Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati (ANBSC) website provides information on real estate and companies, with details on individual assets and updated statistics.

While some information should be made available to the public, it is important that information on specific seized and confiscated assets be shared securely only with other agencies involved in the investigation of illegal proceeds and the prosecution of predicate offenses. While sharing information between agencies within a country should be standard practice and facilitated, note that investigations increasingly involve multiple jurisdictions. The progressively transnational features of crime

require an increased ability of investigators from different jurisdictions to exchange information quickly and securely.

The Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network)²³ offers a platform for informal information exchange among anticorruption law enforcement practitioners. GlobE aims to provide a platform for peer-to-peer information exchange and cooperation to better identify, investigate, and prosecute cross-border corruption offenses and recover stolen assets. The GlobE Network offers this direct secure communication application to its members free of charge. It works like any other secure messaging application but with an emphasis on end-to-end encrypted security and professional use. This platform could be used for corruption-related assets, while the asset management office explores procuring its own system for this purpose.

The report on AROs by the European Commission²⁴ also recognized that a major issue with sharing information between European AROs was that confidential details on cases were exchanged via unsecured methods of communication. For this reason, it was proposed that AROs use the existing Secure Information Exchange Network

Box 2.9. Romania: Integrated Asset Inventory System

In May 2020, the Romanian National Agency for the Management of Seized Assets (ANABI) was granted funds to implement the development of an integrated national IT system (ROARMIS) for tracking seized and confiscated assets. This project is related to the whole judiciary system, as it will bring together up to 40,000 users from all the institutions and authorities involved in the procedures of seizing, managing, and selling assets originating from the offenses committed.

ROARMIS is developed and administered by ANABI and updated on the basis of information added into the system by competent authorities. It provides direct access to all courts, prosecutors, judicial police units, the National Agency for Fiscal Administration, and the Ministry of Justice as the central authority for international cooperation in criminal matters.

Application (SIENA) already in use by Europol. SIENA is a “tool designed to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence between Europol, Member States and third parties that have cooperation agreements with Europol.”²⁵ This platform could also be used to exchange information on assets in cases that fit the Europol mandate.

2.9 Access to Information

Asset management offices typically require access to national property databases and other asset ownership registries for the purpose of providing reliable advice during pre-seizure planning. Accurate asset valuations require access to information about third-party interests in the property, such as mortgages registered against the property. Information about prior transfers of property can often provide clues about beneficial ownership of the property.

Access to ownership information was noted by FATF as one of the “impediments to effective asset tracing and financial investigation.” This impediment is magnified during international cooperation. FATF recommends the implementation of “mechanisms that allow for rapid access to high quality information on the ownership and control of such property (for example, land, vehicles, legal persons)” even without a formal request, when the requesting jurisdiction has only limited information on the asset that is being traced (FATF 2012, p. 2). Similarly, the European Commission noted that “most AROs [Asset Recovery Offices] do not have access (direct or indirect) to all relevant databases that would allow them to perform their task more effectively.”²⁶

It is critical that collected information on seized and confiscated assets is shared and updated with the asset management office. An example of collaboration between asset management offices and property databases can be seen in a case provided by the Department of Assets Recovery and International Legal Cooperation (BRD) in Brazil. Private companies were contracted to manage and auction off vehicles related to illicit activities such as drug trafficking. For the success of this initiative, the participation of the Brazilian National Traffic Department was crucial in providing data on seized vehicles.

2.10 Procurement

Asset management offices, whether they are stand-alone or are located within law enforcement or another public sector agency, may not have the capacity or expertise in-house to handle the management and disposal of every asset. As asset management systems continue to grow and handle larger quantities and more complex assets, it becomes increasingly important to use private sector contractors to assist in managing these assets (for a detailed discussion of the procurement function from the perspective of eliminating corruption, see the UNODC study [UNODC 2013]).

After a certain point, outsourcing becomes the only responsible solution because the likelihood of assets becoming liabilities increases. This may not be evident in the early stages, when the office is focused on seizing bank accounts, for example. However, when jurisdictions begin to deal with unique assets, such as luxury yachts or hotels, managing these assets and preserving their value becomes much more challenging.

There are two main ways that the private sector can get involved in asset management. One way is through court-appointed asset managers who are registered with the court and are used on a case-by-case basis. Another way is through private sector subcontractors who are hired by the asset management office itself. In some places, both options are available. However, according to the UNODC survey, there is still some hesitation to use private sector providers (UNODC 2021).

The government's role is not necessarily to store, maintain, and eventually sell hundreds or thousands of assets of different asset classes every year. However, the government should provide appropriate oversight of these operations. While this function comes at a cost, with proper management and efficient disposal policies and practices, the function can be performed profitably. In New Zealand, the Criminal Proceeds Management Unit within the office of the Official Assignee is supported by a network of contracted providers for a range of services, including physical retrieval of assets in the field, logistics support, security, and property maintenance. Effective management of the procurement and supervision of private sector contractors is an essential role for any asset management structure (box 2.10). (See section 4.5 for a discussion on the procurement and supervision of contractors.)

Box 2.10. World Health Organization: Example of Procurement Principles

Although each organization typically has its own procurement principles and policies, the key procurement principles can be summarized as value for money, transparency, and competition. The World Health Organization (WHO) has particularly clear principles that can help illustrate the point.

WHO's first procurement principle is "best value for money," meaning "the best combination of technical specifications, quality, and price," and is the result of factors such as "quality, experience, the supplier's reputation, lifecycle costs, benefits and parameters" that capture how well the good or service allows the organization to meet its objectives.

WHO's second principle is "fairness, integrity, transparency and equal treatment": all "potential providers should be treated equally, and the process should feature clear evaluation criteria, unambiguous solicitation instructions, realistic requirements, and rules and procedures that are easy to understand."

Finally, "effective competition" is fundamental to guarantee the presentation of multiple providers and allow the other two principles to be met.^a

a WHO Guiding Principles, <https://www.who.int/about/accountability/procurement/principles-and-processes/guiding-principles>.

As crypto assets were regarded as being very technical and complex to deal with, no public entity (within the Belgian justice or finance department) wanted to deal with them. The Central Office for Seizure and Confiscation (COSC) therefore entered into a contract, secured through a public tender, with a private contractor for the storage and sale of crypto assets. The Australian asset management authorities have realized small amounts of crypto assets by themselves, but for large amounts and large values they have also conducted discrete tenders with reputable financial service entities to realize such assets.

Asset management offices need to have an efficient and transparent procurement function to obtain contracts for asset management services, including asset valuation, custody, storage, management, and disposal of tangible assets. The value of the contractor services should be appropriate for the value of the asset.

The goal is to contract a high-quality product or service at a reasonable price while ensuring competition and transparency. This requires strong policies and proper oversight and auditing, both internally and externally, prescribed within asset management legislation, if necessary. It is important to have an external auditing agency that can review each case and verify whether the proper procedures were followed. This helps to reduce improper behavior. In Romania and the United States, asset management offices are among the most audited systems within the respective Ministry of Justice and Department of Justice.

In Romania, apart from the control done in each case by the prosecutors and judges that confirms or denies the requests of the agency and in addition to the public audit performed regularly by the Supreme Audit Authority (Court of Accounts), ANABI is also subject to an annual external audit, usually performed by a reputable external auditing company. The audit covers both management and operational activities, and once concluded, it is submitted for review to the Coordination Council of the agency and the Minister of Justice.

Audits not only help to deter corruption or detect it; they can also be a source of improvement for the overall process. The policies and procedures must be clear in outlining what authority each person in the procurement process has and the procedure to call for bids, the criteria to decide on competing bids, the criteria for quality, and so on.

The policies and procedures should also allow for some discretion for exceptional cases or new asset types. For example, it would not be efficient to go through a four-week (or longer) process to select a contractor to care for animals which would not survive unattended during that period. In certain cases, for special assets or in urgent situations, procedures should allow for direct procurement, usually called a sole-source contract. In these cases, the file must present a proper justification for circumventing the general procedure. Furthermore, the types of assets subject to seizure evolve quickly. For example, virtual assets were not targeted prior to 2010 but now are frequently seized and confiscated.

The contracts with private sector parties should outline as much as possible the roles and responsibilities of each party, which are crucial

for storage and maintenance. Whenever an asset management office requests a bid for a contractor, it should state as clearly as possible what it requires from the contractor. In the United States, this is generally done in a document called a statement of work. This varies from one asset class to another. For motor vehicles, for example, the contract may outline whether the parking lot needs to be covered, whether security is needed (for instance, barbed wire or 24/7 video surveillance), what insurance coverage is required, and other factors. The same is true for maintenance: in the same example, the contract should outline whether the cars are going to be turned on daily, once a week, or monthly; if they are going to be driven, whether their oil should be changed; or if any other maintenance tasks will be required. All of this should be reflected in the contract, and the asset management office should properly monitor the completion of these tasks.

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Notes

- 1 Revised nonbinding guidelines on the management of frozen, seized, and confiscated assets were adopted by the Conference of State Parties to the Convention in 2019 and can be accessed at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2019-May-29-30/V1901749e.pdf>.
- 2 This report was preceded by a Center for the Study of Democracy report (Vettori, Kolarov, and Rusev 2014, p. 9).
- 3 The new directive will amend Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU.
- 4 The aim is to reinforce powers of the asset recovery offices (AROs) that were established pursuant to Council Decision 2007/845/JHA.
- 5 Proposal for a Directive of the European Parliament and of the Council on Asset Recovery and Confiscation, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0245#footnote6>.
- 6 Balkan Asset Management Interagency Network, <https://www.bamin-network.org/>.
- 7 The G8 consists of Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom, and the United States.
- 8 Reporte Estadístico Informativo Junio 2023 - Informes y publicaciones - Programa Nacional de Bienes Incautados - Plataforma del Estado Peruano (www.gob.pe).
- 9 Art. 31(9) of UNCAC, art. 12(8) of UNTOC, and art. 5 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (Warsaw Convention).
- 10 UNODC 2021, sec. II. C.
- 11 See, for example, chap. 4, part 4-1, div. 2 of the Australian Proceeds of Crime Act 2002, <https://www.legislation.gov.au/Details/C2023C00171>.
- 12 European Commission’s June 2020 evaluation report on and the 2007 Council decision on AROs, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022SC0245>. This report was preceded by a Center for the Study of Democracy report (Vettori, Kolarov, and Rusev 2014).
- 13 In Belgium, the asset management office is officially within the Prosecution Office (Ministère Public). It has coordinating functions for the management and disposal of seized assets. For example, the pre-trial sales of most assets are done by a department from the Ministry of Finance (Finshop).
- 14 “Some countries have opted to locate the Asset Management Office (AMO) within law enforcement. In EU countries like Belgium and the Netherlands, the ARO

- established to support asset tracing; enforcement of asset recovery orders across EU borders and to perform other asset management training and policy development functions was also designated to undertake the functions of co-ordinating the management and disposal of seized and confiscated property. Thailand opted to locate the responsibility for management of seized and confiscated property within the Anti-Money Laundering Office, which was established as an independent law enforcement and regulatory agency under the supervision of the Ministry of Justice. In the US the Marshall's [sic] Service, an existing federal law enforcement entity, is responsible for the asset management function and in Brazil the asset management responsibility remains with investigating judges who may appoint professional judicial managers to assist them."
- 15 For more on Canada's SPMD, see <https://www.tpsgc-pwgsc.gc.ca/app-acq/gbs-spm/index-eng.html>.
 - 16 Information on the Asset Management Fund can be found at <https://www.justice.gov/afms/assets-forfeiture-fund-aff>, and reports, including financial statements and reports to Congress, can be found at <https://www.justice.gov/afp/reports-0>.
 - 17 When seized assets are sold, the revenues are managed by Servicio de Administración y Enajenación de Bienes (SAE) through accounts that earn interest. Once these accounts have a final legal status, SAE can deduct its allotted percentage and deposit the remainder into a fund consisting of disposals of government-owned property, which is then transferred to the treasury. The SAE is a decentralized organization of the Mexican Federal Public Administration with the responsibility for distributing assets and unproductive companies for the state.
 - 18 For example, as a result of an EU-supported initiative, with the United Nations Interregional Crime and Justice Research Institute (UNICRI) as the implementing organization, Libya has established an asset recovery and management office, taking into consideration the best practices established by several EU jurisdictions. https://unicri.it/sites/default/files/2022-12/asset_recovery_brochure_web_long.pdf.
 - 19 Article 11 of the 2014 EU Directive of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (2014/42/EU) requires member states to report on the volume and economic value of assets recovered at a national level as well as the level of interaction between the states.
 - 20 Reuters, "Colombia Launches Hunt for Missing Assets Seized from Drug Traffickers," October 13, 2022, accessed December 1, 2022, <https://www.reuters.com/world/americas/colombia-launches-hunt-missing-assets-seized-drug-traffickers-2022-10-14/>. See also Adriaan Alsema, "Colombia Missing Thousands of Assets Seized from Organized Crime. Former Assets Manager under Fire over Missing Assets, Administrative Chaos," *Colombia Reports*, October 11, 2022, accessed December 1, 2022, <https://colombiareports.com/colombia-missing-thousands-of-assets-seized-from-organized-crime/>; and Juan Camilo Jaramillo, "Colombia Continues to Bungle Assets Seized from Drug Traffickers," *InSight Crime*, November 9, 2022, accessed December 1, 2022, <https://insightcrime.org/news/brief/seized-criminal-assets-colombia/>.
 - 21 See the official website of the ANBSC, [https://www.google.com/search?rlz=1C5MACD_enZA1049ZA1050&sxsr=AB5stBgkvPNY-emRF-FR7EXGp6Sy9ipyYIA:1689943951427&q=Agenzia+nazionale+per+I%27amministrazione+e+destinazione+dei+beni+sequestrati+e+confiscati+alla+criminalit%C3%A0+organizzata+\(ANBSC\)+and+the+Servicio+de+Administraci%C3%B3n+y+Enajenaci%C3%B3n+de+Bienes&spell=1&sa=X&ved=2ahUKEwjI2a-jn65-AAxVNT0EAHbBrB_kQBSgAegQICBAB&biw=845&bih=585&dpr=2](https://www.google.com/search?rlz=1C5MACD_enZA1049ZA1050&sxsr=AB5stBgkvPNY-emRF-FR7EXGp6Sy9ipyYIA:1689943951427&q=Agenzia+nazionale+per+I%27amministrazione+e+destinazione+dei+beni+sequestrati+e+confiscati+alla+criminalit%C3%A0+organizzata+(ANBSC)+and+the+Servicio+de+Administraci%C3%B3n+y+Enajenaci%C3%B3n+de+Bienes&spell=1&sa=X&ved=2ahUKEwjI2a-jn65-AAxVNT0EAHbBrB_kQBSgAegQICBAB&biw=845&bih=585&dpr=2).
 - 22 The official website of the Servicio de Administración y Enajenación de Bienes (SAE) is <https://www.gob.mx/indep/documentos/el-sae-se-consolida-como-entidad-promotora-de-responsabilidad-social-29749>.
 - 23 For more information on GlobE, see <https://globenetwork.unodc.org/>.
 - 24 European Commission Report, 2011, <https://eur-lex.europa.eu/legal-content/>

[EN/TXT/?uri=CELEX:52011DC0176](#). The report states, "In its Communication on the Proceeds of Organised Crime, the Commission encourages Europol to play a co-ordinating role between national Asset Recovery Offices. In this connection the Europol Criminal Assets Bureau (ECAB) proposed to explore the possibility of using the Europol SIENA system for the purpose of bilateral information exchange between AROs. The proposal was well received by the ARO Platform."

- 25 For more information on SIENA, see <https://www.europol.europa.eu/operations-services-and-innovation/services-support/information-exchange/secure-information-exchange-network-application-siena>.
- 26 European Commission, Report from the Commission to the European Parliament and to the Council, p. 8, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0176>.

3 Pre-seizure Planning

3.1 Introductory Remarks

Pre-seizure planning is the most important stage of the asset management life cycle. Pre-seizure planning may be defined as the process of anticipating and making collaborative, informed decisions to (a) identify assets available for seizure, (b) determine whether such assets should be seized or targeted for forfeiture (or both), (c) plan the logistics of asset seizure, (d) preserve asset value until disposal, and (e) assess likely disposal options. The entire asset management life cycle of an asset should be considered prior to seizure. As discussed in chapter 2, section 2.7, pre-seizure planning should adhere to the asset management office policies and procedures to avoid seizing assets with low value or significant liabilities, subject to limited exceptions.

Pre-seizure planning should be undertaken concurrently with the criminal investigation(s). If assets are seized at the end of the criminal investigation or after a final criminal conviction, there is a risk that the targets will dissipate, be concealed, or be disposed of upon awareness of the investigation. Accordingly, financial investigations should be conducted in parallel with criminal misconduct investigations to identify all assets that may be subject to seizure. As a result, multiple agencies or units are typically involved, including the investigation team(s) (for example, criminal misconduct investigators and asset-tracing investigators), the prosecution team (including the prosecutor responsible for obtaining the restraining and confiscation orders), and the asset management office. If the case has multijurisdictional aspects and/or possible related civil proceedings, further domestic and international coordination will be necessary. Seizure decisions should be made collaboratively to ensure that all viable assets are seized in a coordinated and consistent manner without harm to other ongoing investigations or prosecutions, including those outside the seizing jurisdiction.

Pre-seizure planning focuses on understanding the asset and how it is expected to be managed from seizure until disposal after forfeiture. Generally, assets should not be seized or restrained if their estimated value at disposal after forfeiture is not above a worthwhile minimum threshold. A seizure decision requires an understanding of the likely depreciation of the asset as well as the expenses of maintaining, storing, and managing the asset until disposal. Thus, pre-seizure planning includes a cost-benefit analysis for assets requiring management during custody. Pre-seizure planning also allows the asset management office to identify and prepare for any special storage or custody arrangements.

The time required to complete pre-seizure planning varies depending on the type of the asset and the degree of consultation with multiple stakeholder agencies. For simple assets (for example, bank accounts) governed by existing procedures of an experienced asset management office, pre-seizure planning may be completed quickly. For complex assets (for example, operating businesses or animals) or complex multijurisdictional cases, pre-seizure planning may require six months or longer. It is essential to allocate sufficient time and resources to pre-seizure planning to ensure that the confiscation is conducted lawfully and efficiently.

Unfortunately, many jurisdictions do not pay sufficient attention to pre-seizure planning. In a 2021 survey conducted by UNODC, 23 governments were asked, "Does your jurisdiction have any legislation or standards of practice that define and require procedures for pre-seizure planning (for example, the process of evaluating assets and confiscation scenarios prior to freezing or seizing assets) and provide criteria or guidance on when to freeze or seize assets?" Eleven jurisdictions responded "no"; and pre-seizure planning did not seem to be well understood within the survey responses (UNODC 2021). (See chapter 2, section 2.7)

Conversely, in some jurisdictions (for example, Canada, Colombia, and the United States), pre-seizure planning is required within the asset forfeiture legislative framework. In Canada, the Seized Property Management Act provides for the asset management office to offer consultative and other services to law enforcement agencies in relation to the restraint of property.¹ Legislation in Colombia makes explicit reference to the importance of carrying out a cost-benefit analysis prior to obtaining a seizure order.² In the United States, notice is to be given to the US Marshals Service at specified periods in advance of an ordinary seizure or complex seizure (for example, any real property, business, livestock, large-quantity assets posing storage problems, or any unusual asset that might pose a special management or disposition problem).

As described in figure 3.1, pre-seizure planning requires consideration of numerous factors, including the following:

- What is the target asset? Are there specific requirements for storage, maintenance, or disposal? Will the asset satisfy the expected forfeiture order?
- Who owns the asset? Are there any third-party interests?
- Where is the asset located?
- Does the present value of the asset meet minimum-value thresholds for seizure?
- What is the expected length of time from seizure to forfeiture?
- What are the estimated expenses and potential liabilities associated with asset management from seizure until disposal?
- Is interim sale permitted? Are there legitimate reasons for interim use of the asset?

Figure 3.1. Pre-seizure Considerations

Source: T.J. Abernathy.

- Does the estimated future value of the asset at disposal meet minimum-value thresholds?
- What is the estimated net equity at disposal?
- If there is minimal or negative estimated net equity at disposal, is there a compelling public interest for seizure?
- If the estimated net equity at disposal meets applicable thresholds, is there a compelling public interest against seizure?
- Does the asset management office have the capacity and resources to maintain the asset and preserve its value?
- Are there alternatives to seizure?
- What conditions for seizure, management, or disposal should be included in the seizure or forfeiture orders?

3.2 Identification of Assets for Forfeiture

Anything with value can be seized and forfeited if permitted under a jurisdiction's forfeiture legal framework. In corruption cases, this may include direct proceeds (for example, a bribe or embezzled funds), indirect (also known as derivative) proceeds (for example, property purchased with the

bribe or embezzled funds; income generated from investments of the direct proceeds), or instrumentalities (for example, a legal entity used to receive the bribe or to transfer embezzled funds).³ If the proceeds are commingled with property acquired from legitimate sources (for example, a jointly owned bank account, or mortgage payments made with bribe payments, confiscation of the commingled property up to the value of proceeds may be permitted. In value-based confiscation jurisdictions, forfeiture of substitute assets may be sought if the proceeds have been spent or are no longer available. Proceeds from foreign offenses, or even legal activity in a foreign jurisdiction, may be seized as well if the conduct giving rise to forfeiture is a crime in the jurisdiction where the assets are located.

All possible assets for seizure should be identified to ensure that the authorities obtain the maximum realizable value at forfeiture. Confiscation systems may be value-based, property-based, or both. Property-based confiscation systems require proof of the connection between the offense and the assets. Value-based systems require evidence of the connection between the assets and the perpetrator of an offense.⁴ As a result, such jurisdictions can seek to confiscate money in lieu of other actual property and thus avoid custody complications, asset management expenses, or disposal complications.

One difficulty may be determining whether an asset is “owned” by the target, as corrupt officials and other criminals often seek to conceal ownership. For example, assets might be

- Owned by a family member or associate of the target and held by them for the benefit of the target
- Owned by a legal entity (such as a corporate entity or trust) that is owned or indirectly controlled by the target
- Gifted by the target to a family member, associate, or company.

Where jurisdictions adopt a broad definition of “ownership,” encompassing those assets legally owned by others or gifted to third parties, a wider range of assets will be available for the execution of a value-based judgment. This definition goes beyond the assets the target directly owns and includes assets held by trusts, corporations, or individuals that are controlled by the target. In cases involving multiple jurisdictions, practitioners should use informal channels such as asset recovery interagency networks (ARINs) to understand the possibilities or limitations of targeting assets for confiscation under counterpart asset recovery frameworks.

Some jurisdictions allow both property-based and value-based confiscation, for example, permitting confiscation of identified assets linked to the offense and a judgment that can be satisfied from a person’s legitimate assets. However, in some of these jurisdictions, value-based confiscation may be available only after showing that the actual proceeds have dissipated.

The assets subject to provisional measures are those that can or are likely to satisfy the eventual confiscation order, which will depend on

the confiscation system. In property-based confiscation systems, it is pointless to seize a house that cannot be characterized as the proceeds or instrumentalities of the criminal act. In contrast, in jurisdictions where value-based confiscation orders or substitute asset provisions are available, there may be good reason to seize such an asset if there is some evidence that the target has derived a quantifiable benefit from the alleged offense approximate to the value of the property. In some jurisdictions where rebuttable presumptions provisions apply, assets may be seized if the offense invokes a presumption that some or all assets are proceeds of crime. For example, if a person is found in possession of property that is disproportionate to their known sources of income, there is a presumption that the property is the proceeds of criminal conduct. Alternatively, as an example of a reverse onus provision, if a person is found in possession of expensive jewelry that is suspected to be connected to a bribe, the burden of proof is on the accused to show that the jewelry was not obtained as a bribe. (For a discussion on legal theories for provisional measures and confiscation, see Brun et al. 2021, chapters 5, 7, 10, and 11.)

Once possible assets are identified, the full scope of the seizure will need to be determined. For example, if a house will be seized, will the seizure order include all furniture and household items? For farms or ranches, are livestock and machinery to be included in the seizure order? The scope of a restraint order on an operating business may be complex: Will preventive measures be applied to all ownership interests and shares, including those registered to third parties? Are all assets affected? If the company has multiple premises or establishments, are all to be seized? Does the seizure order cover operational and other bank accounts? Finally, it is important to consider whether the asset has any ancillary items such as logbooks for aircraft, health certificates or passports for livestock, or authenticity certificates for memorabilia that must be included in the seizure order for the asset to have value at disposal. (See chapter 5 for further discussion on disposals.)

Box 3.1. Scotland: Loss Due to Failure to Seize Cattle Passports

the passport, which must remain with the animal throughout its life. Animals are registered at birth with information such as the date of birth, breed, and bloodline. Since 2021, cattle in Scotland are registered with the Scottish Agriculture and Rural Economy Directorate. Cattle passports enable the movement of animals to be traced. Buyers and inspectors can trace where an animal has been throughout its life. Without the passport, there are restrictions on the animal's movement and the animal is not eligible for the human food chain.

In 2021, Highland Wagyu cattle were seized by law enforcement in Scotland. Unfortunately, the cattle passports were not seized, resulting in an inability to sell the cattle for human consumption. Ultimately, the herd was processed for dog food at a significant loss of value.

Source: Government of Scotland Agriculture and Rural Economy Directorate, "Livestock Identification and Traceability: Guidance," <https://www.gov.scot/publications/livestock-identification-and-traceability-guidance/pages/cattle/>.

3.3 Asset Type

Although an asset can be seized, its seizure may not ultimately be worthwhile to the jurisdiction. Once possible assets have been identified, each asset should be analyzed to understand its current and potential value and liabilities.

For most assets, the questions are simple: Is there recoverable value for society? What is the expected final disposal value of the asset minus the expenses incurred during the custody and management stages? The complexity of this decision will depend greatly on asset type. It is relatively easy to estimate a bank account's value and any associated (and probably minimal) expenses for management. However, the seizure of a \$1,000,000 house may not be worthwhile if the house has a \$900,000 mortgage, liens, other liabilities, and likely difficult sale conditions.

Assets are typically categorized into three groups for the purpose of asset management:

- **Real property**, such as land and/or any permanent structures or improvements attached to it (for example, a house, farm, commercial building, or vacant lot), as well as the rights and interests associated with the land, such as mineral rights, water rights, and easements.
- **Tangible personal property**, which is generally movable assets such as physical cash, artwork, antiques, jewelry, stamps, vehicles, marine vessels, and aircraft.
- **Complex assets**, such as intangible personal property (for example, financial instruments [stocks, bonds, liens, or virtual assets], licenses (for example, professional, liquor, taxi, and business), intellectual property (for example, patents, copyrights, and website domain names), and operating businesses.

As discussed in chapter 2, section 2.7, it is recommended that asset management offices have policies to ensure that seizure decisions are informed, ethical, and transparent. Policies and procedures may be developed by asset type to include minimum-value thresholds for seizure, maintenance procedures, and provisions for management by private sector contractors. Some asset types may be best restrained through provisional measures by the courts rather than by the asset management office taking physical possession (see section 3.13.4) In addition to thresholds to avoid the restraint or seizure of low-value assets, some jurisdictions have policies against seizure of certain types of assets, such as live animals, property with environmental hazards, or property contaminated by chemicals used in the production of methamphetamine or other illegal narcotics. Conversely, some jurisdictions mandate seizure of certain property for destruction, such as firearms, ammunition, explosives, or vehicles that have been customized for illegal activities such as drug or human trafficking. (See chapter 6 for a detailed discussion of specific asset management considerations for various asset types.)

3.4 Asset Location

The location of the asset may affect asset management in several ways, including the logistics of taking custody, storage and maintenance expenses, and value at disposal. An initial consideration is whether the asset is located in the same jurisdiction as the asset management office. How the asset will be transported to the location where it will be held until disposal will need to be determined and the associated transportation expenses estimated. Seizure of high-value luxury assets requires additional planning. For example, the transportation of artwork may incur significant expenses for packing, security, appropriate storage facilities, and insurance.

If the asset identified for seizure is in another jurisdiction, seizure will entail additional considerations and coordination with counterparts. In a United States case, investigators identified an airplane located in Singapore as a potential asset for seizure. In coordination with Singapore counterparts, the transportation of the plane to the United States resulted in a substantial cost because of the need to hire a crew, purchase fuel, and cover other related expenses. In another case, the United States seized a yacht located in Fiji. In addition to the transportation expenses of moving the yacht to the United States, additional storage costs were incurred because the yacht was too large to be stored at the US Marshals Service's usual vendor-owned facility in Florida. The yacht had to be stored with another vendor in California at a significantly greater expense.

With international seizures, there may be other important considerations to be addressed through international coordination during pre-seizure planning. For example, an investigative agency may track a movable asset, such as a yacht or airplane, and wait to act against it (whether seizing through taking physical custody or imposing restraint measures) until the asset has moved to a jurisdiction where existing treaties and working relationships make such provisional measures possible or preferable. Alternatively, in some jurisdictions, there are restrictions on the ownership of property by other sovereign governments. Accordingly, the asset may need to be restrained until a final forfeiture order, with the enforcement of such order, sale of the assets, and return of the sale proceeds. In these cases, international cooperation is an essential part of the pre-seizure planning, as is coordination, including through asset recovery networks such as ARINs.

Assuming that jurisdiction is not an issue, location may have other implications for seizure, custody, and asset valuation. For certain asset classes (for example, financial instruments), the location at one bank branch or another is unimportant. However, the location of real property may have significant implications if the asset is located in a remote, rural, mountainous, or high-crime area. Seizing a property in the mountains in the winter may have different logistics or expenses than in the summer. In urban areas, seizing an asset in a high-crime area may raise costly and complicated security concerns for seizure and higher monitoring expenses during custody. If greater value at disposal could be obtained through sale of the asset in another location, the transportation and insurance expenses should be included when estimating the asset's maintenance and disposal expenses.

3.5 Asset Ownership and Third-Party Interests

Before seizure, each targeted asset should be evaluated to ensure it is actually owned by the target. During pre-seizure planning, the targeted asset's legal owner(s)—and, importantly, the asset's actual or beneficial owner(s)—should be identified. The assessment should consider whether there is clear title to the asset or there are any encumbrances on its value, such as liens, mortgages, or other legitimate third-party interests.⁵ Prior to seizure, any third-party claims should be identified to understand the potential diminution of recoverable value at disposal, as well as to assess the likelihood of litigation by third-party owners and associated expenses.

Not only will encumbrances affect the value of the asset at disposal, but also in many jurisdictions, the owner of seized or restrained assets may request payment of legal fees from the assets to challenge the forfeiture or related proceedings. Practitioners identified this practice as a barrier that can significantly dissipate the net recoverable value of seized assets, particularly when the legal fees are significant.⁶

For certain asset classes, obtaining ownership information is straightforward. Real property and movable assets typically have legal documents such as titles with information available in official registries. Such records may be obtained through title searches (deeds, chain of ownership, existing liens, and potential claimants) within public records, although the ease of search and the information available will vary by jurisdiction. If assets are located outside of a jurisdiction, investigators may seek informal assistance from counterparts through networks such as the ARINs.

Even when titles are clear, the legal owner of record may be different from the beneficial owner. Criminals frequently use legal persons or legal arrangements to conceal their beneficial ownership of luxury assets, including real property, movable personal property (for example, marine vessels and aircraft), and business interests. During the criminal investigation, it may be necessary to prove the defendant's beneficial ownership of the asset or link the asset to the proceeds of the defendant's crime(s).

In general, ownership of assets such as personal property is assumed by virtue of the possession of such assets by the defendant. However, the ownership of such assets may be contested by third parties claiming the asset was stolen or borrowed by the defendant. Depending on the jurisdiction and law, a claimant may have to prove the asset was not the proceeds of the crime. The expenses associated with litigation and judicial review of the ownership claims may diminish the net recovered value available following disposal, even if the government prevails in proving ownership of the asset by the defendant and the application of a forfeiture order to the asset.

In cases involving real property, an investigation should be undertaken to determine the defendant's equity in the property, including the amount of any mortgages, liens, or other third-party interests. In addition, the existence of any tenancy agreements for the property should be identified, as well as the usual occupants of the property. As discussed further in chapter 6, section 6.2, paying tenants may add value to commercial

properties at disposal. Conversely, illegal tenants living in the property, or the presence of minor children or other relatives living in a private home as usual occupants, may add significant complications and will likely need to be addressed in the seizure order. These complications and potential litigation may result in additional expenses to be included in the net equity analysis. As part of the pre-seizure planning, a site visit may be considered in addition to the title search to identify such issues.

3.6 Asset Valuation

For seizure, assets should be expected to satisfy the forfeiture order and have value at disposal. A net equity analysis estimates the proceeds at the time of disposal of the asset after deduction of depreciation and all expenses anticipated through seizure, custody, management, and disposal. The analysis should be a realistic estimate of the condition and value of the property, quantification of the target's interest in the asset, and the potential validity of third-party claims. If the asset will have negligible value at disposal, or if the expenses associated with custody and management of that asset prior to forfeiture are estimated to exceed its projected disposal value, the asset should not be seized, absent a compelling government reason (see section 3.12.3). Thus, asset valuation during pre-seizure planning seeks to ensure that the government will not suffer financial losses or reputational harm from the asset's seizure.

As a starting point for the net equity analysis, the present value and the expected disposal value are estimated for each asset identified for possible seizure. A realistic estimate of the condition of the asset is required. Accordingly, if possible, a site visit or examination of the asset as part of the assessment should be considered.

As asset value will change over time, an important consideration to estimate the future value of an asset will be the length of time from seizure until anticipated disposal (either pursuant to an interim sale allowed as a provisional measure or a forfeiture order). The length of time will vary among jurisdictions because of the typical length of asset recovery proceedings in the jurisdiction, the complexity of the case, and the existence of third-party claims. For jurisdictions in which assets can be liquidated immediately while the judicial process is ongoing (with or without the defendant's consent), there may be a negligible difference between the value of an asset at seizure and the value at disposal. (Pre-adjudication sales and other considerations regarding interim measures are discussed in chapter 4, sections 4.3 and 4.4.)

For assets that will be held in custody until a final forfeiture decision, the potential effect of depreciation on the asset value at disposal may be significant. In general, most assets will depreciate, but unique assets may depreciate, maintain value, or even appreciate. Depreciation estimates may vary not only among asset classes but also within classes. For example, a new luxury car with a relatively high value today may have only one-third of its value in five years because of depreciation. Conversely, a rare vintage

car might appreciate. In either case, the future value of the car will also be affected by its condition at disposal as maintained during custody by the asset management office with associated expenses (for example, storage facility, security, and maintenance).

For many asset classes, the present and future values may be estimated through publicly available historical and recent sale records. An experienced asset management office may use publicly available resources to estimate future value of simple assets such as bank accounts, common motor vehicles, or simple real property. Asset management offices should have standard net equity analysis templates for each asset class and type with minimum thresholds and other pertinent information for pre-seizure planning.

Estimating present and future value of complex or unique assets will require special consideration. For example, the valuation of an operating business may rise to the level of due diligence that would be undertaken prior to its acquisition. The valuation of the business should accurately determine its debt load and equity. Such a valuation should be objective and transparent and should be conducted by either a government entity with relevant subject matter expertise, such as the tax authorities, or a private sector entity with the requisite financial analysis skills and industry knowledge.

Some issues regarding disposal of the property may not be easily factored into a quantitative net equity analysis. For example, some businesses may have been run as part of criminal activities (for example, money laundering) and may not be financially viable independent of such criminal activities. Selling certain assets, especially real estate, can be difficult because potential buyers may be hesitant to purchase property that was previously owned by a notorious criminal.⁷ Conversely, personal property previously owned by a notorious criminal may surpass expectations for such property otherwise at auction.⁸ Accordingly, the asset management office will need to engage private sector appraisers, which will add time and cost to the pre-seizure planning. (Procurement of contractor services is discussed in chapter 2, section 2.10, and chapter 4, section 4.5).

Further, when an asset is seized or confiscated, the government may become responsible for the asset's liabilities, including labor, tax, and environmental liabilities. Although a gas station might be a relatively simple operating business, the remediation expenses of environmental contamination of the property may result in a net negative equity value for the government at disposal. Thus, in addition to the condition of an asset or the financial condition of a business, detailed inquiry is necessary to prevent the government from obtaining a net liability from hidden expenses. Asset valuation may include ground testing for contamination or other environmental liabilities; identifying possible litigation claims, outstanding tax obligations, or labor disputes; and confirming the status of operating licenses. Experienced asset management offices will likely have developed policies excluding the seizure of some types of complex asset for these reasons (see chapter 2, section 2.7).

3.7 Estimation of Asset Management Expenses until Forfeiture

The net equity analysis requires an estimation of all expenses anticipated through seizure, custody, management, and disposal. As part of pre-seizure planning, all resources (for example, financial, personal, security, and insurance) necessary to manage the asset and preserve its value from seizure until its disposal must be identified. For complex assets, private sector contractors (if likely to be involved during custody) should be consulted to identify expenses and possible problems with the assets' storage and preservation during custody and disposal. In addition to the net equity analysis, this understanding will also determine whether any specific powers and conditions should be included in the seizure order to facilitate the management of the asset.

Possible asset management expenses during custody include expenses of transportation, storage, security, insurance, maintenance, service fees, utilities, mortgage or rental payments, salaries, private sector contractor fees, and even disposal expenses such as publicity and auction venue rental. The maintenance expenses of some asset classes, such as yachts, can be significant. High-value assets or unique assets (for example, castles and collector cars) may also take longer to sell after a forfeiture decision, resulting in additional time and expenses of asset management. These maintenance expenses must be anticipated in pre-seizure planning and the

Box 3.2. Good Practice: Maintaining Proper Records of Pre-seizure Planning

Proper records of pre-seizure planning ensure accountability and transparency by maintaining that all necessary information is available and demonstrating that procedures have been followed in a responsible and effective manner. These records may also be necessary for the government's defense against claims of unlawful seizure or damages resulting from mismanagement of seized assets if a forfeiture order is not obtained. Accordingly, all pre-seizure planning checklists, appraisals, and net equity analyses should be maintained in the asset management office's records.

If the net equity analysis indicates that the liens, mortgages, and management expenses approach or exceed the potential equity, the potential loss, the circumstances warranting the seizure and forfeiture, and other factors underlying the decisions should be documented. In cases in which the net equity analysis shows that the property has marginal or negative net equity, the government should document efforts to protect innocent lienholders and to dispose of the property in a manner that will minimize loss to the government, such as interim sale, appointment of a professional asset manager, or other measures.

Any deviation from established procedures and the underlying reasons for that deviation should be documented and maintained in the pre-seizure planning records.

appropriate financial resources identified through the anticipated date of disposal after forfeiture. For more detailed management considerations for specific asset types, see chapter 6.

As part of pre-seizure planning, storage and maintenance costs during custody should be estimated with the goal of maximizing returns by preserving assets at an appropriate expense level. Thus, estimated storage and maintenance levels of care should be based on certain minimum present-value thresholds, which vary by asset class. For example, the decision to pay for an indoor storage facility should not be the same for a vintage car or a luxury sports car as it would be for a common car. The asset management office should not make storage and maintenance decisions on a case-by-case basis but through pre-established thresholds and with reliable asset valuations. See chapter 4, section 4.2, for further detail on maintaining seized assets.

As part of pre-seizure planning, a decision will need to be made whether an operating business will be allowed to continue operations after seizure or will be shut down. The asset management office should establish the specific procedures for dealing with businesses that are viable (that is, profitable and productive with low debt) and those that are not viable (that is, entities with little value or equity and relatively high risk of failure or bankruptcy). (See chapter 6, section 6.4.2, for a detailed discussion of asset management considerations for operating businesses.)

The government assumes all risks and liabilities associated with managing that asset during custody. In some jurisdictions, such as the United States, the government pays any applicable real property taxes that accrue from the date of seizure until the date of a forfeiture order. Additional expenses or liabilities may arise from litigation involving the defendant or third parties against the seizure order, or litigation involving the normal operations of an operating business or commercial property.

A court will often give an asset manager direct responsibility to disburse funds from restrained assets for the living, legal, and business expenses of a target and his or her dependents.⁹ In most cases, the expenses will be determined by law or fixed by the court, although the asset manager may occasionally be involved in determining what is “reasonable” for certain purposes—an assessment that the target can dispute by making an application to the court. Because the payment of those expenses is frequently disputed before courts, this issue should be considered during pre-seizure planning.

Although outside the scope of this publication, seized assets that will be used as evidence in criminal or forfeiture proceedings may incur additional security or storage expenses to maintain the chain of custody for admissibility in court proceedings.

3.8 Interim Sale or Interim Use

As part of pre-seizure planning, the possibility of an interim sale (also known as a prejudgment sale) should be considered if available under the jurisdiction's forfeiture laws, through an interlocutory sale order by the court, or with consent of the asset's owner(s). "G8 Best Practices for the Administration of Seized Assets" recommends that jurisdictions establish the legal framework to allow pre-judgment sale of perishable or rapidly depreciating assets.

As discussed in chapter 4, section 4.3, some jurisdictions allow the sale of an asset prior to a forfeiture order if there is a risk of perishing or rapid diminution in value. Interim sales are not permitted generally if the seized assets are required for evidentiary purposes, if the asset is unique or highly valuable, or in the absence of required consent by the owner.

If an interim sale is not possible or legally permitted, interim use may be a productive way of preserving the value of seized assets and avoiding depreciation. Leases on residential and commercial property subject to seizure may be allowed to continue. Similarly, businesses that are operating as a going concern can be taken over by an interim manager or a court-appointed third-party manager, rather than being closed and ceasing operation. This allows the property to continue to be used productively, maintaining employment, generating income, and potentially leading to a higher return if sold after forfeiture, rather than sitting vacant. However, interim use raises potential cost issues, particularly if the court orders the return of the asset. See chapter 4, section 4.4, for a more detailed discussion of interim use. As part of pre-seizure planning, any anticipated revenues or costs associated with interim use should be included in the net equity analysis.

3.9 Likely Asset Disposal Outcomes

As part of the net equity analysis, pre-seizure planning will consider the expenses associated with the probable disposal outcomes for the assets. As discussed in greater detail in chapter 5, section 5.2, sale of an asset is not the only possible disposal outcome. For example, seized assets must be returned if a forfeiture order is not obtained. Among other possible outcomes, forfeited assets may be sold as assets for their original intended purpose, sold for salvage or scrap value, destroyed, repurposed for social reuse, or assigned to official use by various agencies. (See chapter 5 for a discussion on various disposal methods.)

In certain circumstances after a forfeiture decision, the asset management office may be required to dispose of assets through salvage, scrap, or destruction. This may be the case, for example, where assets were seized for evidence purposes (such as an old car that was used to transport narcotics) or where an overzealous prosecutor or court orders the seizure of "any and all assets" (including low-value personal property, furniture, or other assets that an asset management office would not

normally seize). Most often, however, the need for disposal in this manner results from poor pre-seizure planning (such as incorrect estimation of asset value, failure to anticipate the length of time until forfeiture, failure to impose a minimum-value threshold, poor management, or inadequate storage conditions). For more information on salvage, scrap, or destruction resulting from poor pre-seizure planning, refer to chapter 5, section 5.5.

If permitted by the court order or forfeiture framework, an asset management office can eventually decide to destroy assets of significant value, or to seize assets of relatively small value. There are certain assets that a government will decide to destroy regardless of their value. In a notorious organized crime case in the United States (*United States v. James J. Bulger*),¹⁰ a large collection of Nazi memorabilia was seized. If the collection had been sold at auction, it could have raised a substantial amount for the compensation of victims, including the families of victims of homicides. However, the United States government decided against the sale of such notorious items, in favor of destruction. The destruction of seized vehicles that have been modified with secret compartments for trafficking or concealment of weapons may also be determined to be in the public interest. Other assets subject to destruction include dangerous, hazardous, illegal, unlicensed, or counterfeit goods.

For destruction of seized assets, relevant policies and procedures must exist in the asset management legislative framework. Generally, the asset management office, prosecutors, and law enforcement must agree to destruction of an asset before the court is asked to allow it.

As part of pre-seizure planning, asset management offices should consider developing a contingency plan with alternatives if the asset deteriorates more than anticipated during custody or if changes in circumstance significantly affect the projected disposal outcome. For example, a plan might include applying to the court to request an interlocutory sale order to sell the asset immediately, if permitted. (See more on interim measures in chapter 4, section 4.3.)

Finally, during pre-seizure planning, the possible future official use or social reuse of the asset may be considered, if permissible under the jurisdiction's forfeiture legislation and applicable asset management policies. These solutions involve much more than merely dispossessing and selling the assets of a criminal. Social reuse of asset toward a socially desirable goal requires the leadership and participation of a government agency in collaboration with local government or nongovernmental organizations. Official use may raise conflict-of-interest concerns. Accordingly, any contemplation of official use should be planned with transparency and accountability and in accordance with applicable laws and policies. See chapter 4, section 4.4, for a discussion on interim use of seized assets and chapter 5, sections 5.3 and 5.4 for discussion of official use and social use, respectively, of confiscated assets.

Box 3.3. Good Practice: Preparing a Risk Assessment of Likely Disposal Outcomes

While identifying likely asset disposal outcomes, it is useful to assess potential risks and complications to such disposal and, where possible, to identify alternative exit strategies. Potential complications frequently arise with many types of assets, especially complex assets (for example, title issues, environmental liabilities, and litigation). Accordingly, the asset management office may wish to identify an alternative exit strategy to ensure that it does not end up absorbing undue liabilities for a given asset. Discussions with private sector contractors or other asset management offices may help identify the range of value or expenses associated with the likely disposal outcome, as well as identify alternative exit strategies.

Maintaining records of the risk assessments can protect against reputational harm to the asset management office, as well as allow the possibility of reviewing and improving pre-seizure planning in future cases.

Box 3.4. Uzbekistan: Mandatory Destruction of Unsafe, Hazardous Property

In Uzbekistan, article 294 of the Criminal Procedure Code provides for the mandatory destruction of confiscated assets such as the following:

- Ethyl alcohol (food), alcoholic products, and beer
- Tobacco products
- Medicines and medical products
- Biologically active food supplements, food additives
- Food and other goods recognized by expert opinion as unsuitable for direct consumption (use)
- Products subject to mandatory certification, recognized by the conclusion of the certification body as not complying with the requirements of regulatory acts on standardization
- Counterfeit copies of works and objects of related rights, except for cases of their transfer to the right holder at his request, as well as equipment used for the manufacture and reproduction of counterfeit works and objects of related rights.

3.10 Asset Management Office Capacity and Resources

Pre-seizure planning also requires consideration of the asset management office's own resources and capabilities. An established, well-funded asset management office with significant experience, comprehensive policies and procedures, and a roster of competent private sector contractors likely will be able to manage more complex assets than a newly established asset management office. New asset management offices may benefit by gaining experience managing simple assets prior to seeking to manage complex assets. As the asset management portfolio increases, an asset management office may use a combination of in-house expertise (such as sworn personnel who are auto mechanics or pilots) and hired consultants, including aircraft mechanics and marina staff, to manage the various types of conveyances seized.

Seizing complex assets requires clear policies and significant resources. If the asset management office lacks the requisite policies, resources, capacity, and experience, reputational harm may occur and significant financial liabilities ensue. For example, if an overconfident asset management office recommends the seizure of assets that the office lacks the resources or expertise to manage properly, it may lead to the need for salvage, scrap, or destruction as a method of disposal. (See chapter 5, section 5.5, for a discussion of salvage, scrap, or destruction resulting from poor pre-seizure planning.)

If necessary and as an interim measure, an asset management office may consider hiring a general management consultant who is responsible for all custody, management, and disposition of a class of assets, such as seized conveyances. The general contractor is responsible for hiring subcontractors to deal with specific mechanical and storage requirements of seized assets. (See chapter 4, section 4.5, for a discussion of hiring and supervising private sector contractors.)

If an asset management office does not have the capacity to manage a specific asset, it should evaluate other alternatives that may be available under legislation, such as use of a contractor, interim sale, or a court-appointed manager. In addition, alternatives to seizure of the asset may be considered.

3.11 Alternatives to Seizure

In many instances, it may be ill-advised or wasteful to seek forfeiture of an asset, including the following circumstances:

- Pre-seizure planning reveals management problems, such as excessive expenses or burdensome storage, preservation, and disposition requirements.
- An asset does not meet net equity value thresholds, has a low monetary value, or is in poor condition.

- Seizure of assets may result in the target and his or her family being unable to subsist or may unduly restrict their fundamental rights. For example, in cases in which a target and his or her family owned several cars, the more valuable cars may be seized but at least one vehicle should remain with the target or his or her family for daily transportation, but under a restraint order on conditions of use or sale.
- Third parties, such as lienholders, will likely be entitled to relief from the forfeiture.
- There are other compelling public interest arguments against pursuing forfeiture (see section 3.12.3).

Accordingly, the government may seek to identify alternatives to seizure. Although a primary goal of asset forfeiture is to deprive criminals of property used or acquired through illegal activities, this goal can be achieved by other means, including the following:

- If value-based confiscation or substitute assets provisions are available, other assets may be sought.
- If substitute assets are not available to fulfill a forfeiture order, an increased fine against the defendant may be considered, if available under criminal law.
- If the property is being marketed for sale, the sale may be allowed to continue, after which the government seizes the net proceeds, or a portion of the proceeds of the sale.
- If the targeted real property has expected negative or minimal net proceeds of sale, the mortgage holder may be allowed to foreclose on the mortgage to later target the equity, if any, for seizure from the escrow account.
- In certain high-crime areas, low-value real property (for example, “drug houses”) may be demolished through condemnation because of health or safety code violations or by declaring the property a public nuisance.
- If taxes are owed on the property, consider with tax authorities whether tax foreclosure may be used to seize and sell the property to recover the unpaid taxes, with the government seeking proceeds from the foreclosure sale in an interpleader action.¹¹
- If the target property is jointly owned by a target and an innocent third-party investor, a restraint order may be imposed on the target’s interest rather than on the whole property. Such an order will prevent the dealings with the whole property as it will be difficult for the third party to deal independently for his or her interest. This approach may help avoid disputes with third parties as it will be evident that the government’s intention is not to seize the third party’s interest in the property.
- If the property is subject to liens or encumbrances, the property may be released to a lienholder to seek a lien in favor of the government.¹²

- If available, consider whether to record a *lis pendens*¹³ in the real property records of the jurisdiction, which, although not a seizure, will likely impede disposal of the property.
- If the target will agree, allow the posting of a financial guarantee (for example, cash or other property) in lieu of seizure of the asset.
- The target may be allowed to retain custody and control of the asset if restraint measures are placed on the use and maintenance of the asset with monitoring by the asset management office.
- Destruction of low-value assets may also be considered with the court's permission if the cost of storage and/or management outweighs the value of the asset or if there is a compelling interest in depriving the target of the asset (for example, vehicles modified for trafficking).

As discussed further in sections 3.11 and 3.13.4, if there is not an imminent risk of dissipation or concealment of the asset, seizure prior to a forfeiture order may not be necessary to preserve the government's interests. Indeed, allowing continued control of the asset by the target but with restrictions on use or disposal through a restraint order may best preserve value as, generally, the owners of assets are the best custodians.

It is important to note that these alternatives to seizure may still incur expenses for the asset management office, such as regularly monitoring restrained assets to protect against abuse and damage of the assets or to ensure adherence to conditions of the restraint order. The asset management office will want to clearly understand its responsibilities and how any associated expenses will be covered.

Box 3.5. Good Practice: Adopting a Communication Strategy

In high-profile cases, public or media interest may be anticipated. As a result, a communications or media strategy may be developed as part of pre-seizure planning. The strategy should be agreed to by the involved agencies (for example, the criminal and financial investigation teams, the prosecution team, the asset management office, and other domestic or international counterparts). All concerned agencies should agree to expectations on confidentiality throughout the various stages of the investigative and legal proceedings.

A designated spokesperson from a specified agency may be identified. This individual will be briefed in advance on developments in the case and will be tasked with responding to all inquiries from media, nongovernmental organizations, other government agencies, and the public. Alternatively, where a designated spokesperson will not be used, a communications plan should be established to coordinate any response among the concerned agencies. A press release may be considered to announce public information on the basis and purpose of the seizure, restraint, or forfeiture.

3.12 Seizure Decisions

The decision to seek a seizure order should ideally be made collaboratively by the relevant prosecutors, law enforcement, and the asset management office. Other domestic or foreign stakeholders with related ongoing investigations or prosecutions should be consulted as necessary. The decision to seek seizure should be informed by the following questions:

- Is the government likely to prevail in the forfeiture action?
- What is the expected net equity from the forfeiture? Does it meet applicable policy thresholds?
- Is seizure necessary prior to forfeiture to preserve the government's interests? (For example, is there a risk of dissipation or concealment of the asset?)
- Are there identifiable victims or innocent third parties that have valid claims to the asset?
- Are there compelling public interests for or against seizure?
- Is interim sale of the asset permitted?
- How will the asset be managed during custody? How much will appropriate custody and management cost?
- Does the asset management office have the requisite capacity and resources?
- Are there preferable alternatives to seizure?
- What conditions for seizure, management, or disposal should be included in the applicable court orders?

As most of these issues have already been discussed as part of pre-seizure planning, additional detail on the remaining factors follows.

3.12.1 Likely Success of Government's Forfeiture Action

The primary determination to be made before seizing assets for forfeiture is whether the government is likely to prevail in the forfeiture action. If assets are seized, the asset management office should regularly consult with the applicable prosecutors or investigating magistrates during custody to assess the continued likelihood of the government prevailing in forfeiture. If it is determined that the government is no longer likely to prevail, the assets or the proceeds of interim sale should be returned promptly. The asset management office should have well-defined policies and procedures on the timing, method, and other provisions for the return of assets.

3.12.2 Net Equity Thresholds

To ensure that the seizure and forfeiture of an asset are worthwhile, asset management offices should establish net equity thresholds for seizure.

Net equity is the expected proceeds less third-party liens, mortgage(s), and other interests and less the total estimated seizure, management, and disposition expenses. The expected proceeds are estimated from the present market or appraised value of the asset less expected depreciation until disposal, with consideration of any additional factors that could affect the value.

$$\text{Net Equity} = \text{Expected Proceeds} - [\text{Third-Party Interests} + \text{Expenses}]$$

In value-based confiscation systems, aggregate net equity may be calculated to confirm satisfaction of the forfeiture order. The aggregate net equity is the total value of all the property seized from the target where the property is subject to forfeiture under the same statutory authority and on the same factual basis.

As part of pre-seizure planning, the type of property involved and its value should have been considered with a realistic estimate of the condition and value of the property, expected depreciation until the anticipated time of disposal, the extent of the target's interest in the asset, and the potential validity of third-party claims. In addition, the expenses of custody and the likely proceeds and expenses of disposal should have been estimated. Asset management offices should estimate net equity for each targeted asset and confirm that the net equity exceeds the minimum thresholds established for the asset type in accordance with the office's policies. Standard net equity worksheets or templates facilitate this analysis and should be developed by the asset management office.

The net equity estimates and associated worksheets should be maintained in the asset management office's records. During custody of the asset, the asset management office should periodically review the net equity estimate to confirm that it remains accurate. Following disposal of the asset, it is useful to review the net equity estimate to identify possible improvements to the asset management office's future calculations of the estimated net equity of similar assets.

3.12.3 Compelling Public Interest for or against Seizure

It should be kept in mind that the purpose of forfeiture is not to make a profit for the government, but to deprive criminals from benefiting from their crimes, to recover property for the benefit of victims, and to restore public confidence in the rule of law. "G8 Best Practices for the Administration of Seized Assets" (G8 Lyon/Roma Group, Criminal Legal Affairs Subgroup 2005) provides as a general principle that "the law enforcement objective of taking the proceeds or instrumentalities of the crime should be paramount. Consequently, there will be cases in which the competent authority should seize criminal proceeds and instrumentalities even though it will be unable to recover the resulting asset administration expenses."

Even if an asset has negative value or does not meet minimum net equity thresholds, there may be an overriding public interest served by its seizure and forfeiture, as in the following examples:

Box 3.6. United States: Net Equity Requirements

In general, the minimum net equity requirements established for individual assets are as follows:

Real property and vacant land	US\$30,000 or 20 percent of the appraised value, whichever is greater
Vehicles	US\$10,000
Aircraft	US\$30,000
Marine vessels	US\$15,000
Cash/financial instruments	US\$ 5,000
Other personal property	US\$2,000 in aggregate

For firearms, ammunition, explosives, devices used in child exploitation, and vehicles with after-market hidden compartments, minimum value and net equity thresholds do not apply because there is a compelling law enforcement interest in forfeiting these items.

Exceptions from the minimum net equity requirements are not allowed for any individual item if it has value of less than US\$1,000. Exception may be allowed if practical considerations support the seizure (for example, 20 items of jewelry, each valued at US\$500, might be seized, as the total value of the items is US\$10,000 and the cost of storing 20 small items of jewelry is not excessive).

Source: US Department of Justice 2023.

- The failure to seek forfeiture of some of the assets will cause the jurisdiction to take an inconsistent position in its theory of forfeiture and the promotion of the rule of law.
- The seizure and forfeiture will deprive a defendant or associate of the enjoyment of the proceeds of crime, such as corruption.
- The seized assets are an integral part of the criminal operation (for example, vehicles customized for illegal activities such as smuggling or trafficking), and the failure to seek forfeiture of the asset will allow the criminal operation to continue.
- The public interest in disrupting illicit activity may favor seizure and forfeiture of an abandoned house used to distribute drugs if forfeiture can lead to the demolition of the structure and a sale of the land

or social reuse of the property after redevelopment (see chapter 5, section 5.4).

- The asset management office will build necessary capacity and experience in managing such assets.

Conversely, despite an asset meeting the net equity threshold, there may be an overriding public interest against seizure. For example, although a discotheque, adult entertainment venue, medical marijuana dispensary, or marijuana cultivation center may be a legal and profitable business under a jurisdiction's laws, seizure may not be in the best interest because of reputational concerns of the government managing such business as an ongoing concern. In such a case in the United States, although an adult entertainment venue was identified as an asset available for seizure, the prosecutors applied to the court with a rationale against seizure of that asset and the court agreed.

If an asset that does not meet the required thresholds is approved for seizure, restraint, or forfeiture, the decision should be documented with the basis for the exception and maintained in the asset management office's records. The record should also include the understanding regarding payment of asset management expenses associated with the asset.

3.12.4 Interests of Victims

If there are identifiable victims other than the government involved in a proposed seizure and forfeiture and these victims have an interest in the seized property, it may be appropriate to not pursue the forfeiture. This is because protection of the victims' interests will likely result in mitigation in their favor. However, if there is a risk that the assets may be sold, disposed of, concealed, or depleted before distribution to the victims, seizure of the asset by the government may be necessary. Factors that may weigh against pursuing forfeiture include (a) injunctions to prevent disposition or encumbrance of the property or (b) the likelihood that other circumstances, such as existing civil proceedings and liens, will allow for the distribution of assets to the victims.

3.13 Taking Custody of Assets

3.13.1 Application for Provisional Measures

Once a seizure decision has been made, pre-seizure planning involves determining how and when the seizure will occur. This includes deciding whether immediate seizure of the asset to take custody is necessary or other restraint measures are available to sufficiently protect the government's interest until a forfeiture decision is made by the court.

Taking custody of an asset means taking possession of it through a warrant or legal authority, which brings the asset within the court's jurisdiction. The government takes possession or responsibility over the asset

Box 3.7. Good Practice: Seizure Orders Include Relevant Asset Management Provisions

Several issues in taking custody and managing the asset until forfeiture may be avoided through ensuring that the seizure order to be made by the court is clear and comprehensive. In addition to the legal requirements within a jurisdiction, possible asset management issues to be addressed in the seizure order include the following:

- Specifying which agency or authority will execute the seizure order.
- Including relevant officers from the asset management office or asset manager in the writ of entry for the legal authority to enter the premises and to search for and seize the property, as appropriate.
- Accurately identifying and describing the asset to be seized. If inaccurate, there may be delays to the seizure of the correct property and the government may incur liabilities from the seizure of property from innocent parties.
- Confirming that the scope of the seizure order includes all targeted assets or necessary ancillary items. For example, are furniture and household items, livestock, and machinery located on the premises to be seized? Are there necessary ancillary items such as logbooks and maintenance records (aircraft and marine vessels), health certificates or passports (livestock), authenticity certificates (memorabilia), or passkeys (crypto assets) that should be included?
- Including preservation and asset management measures as identified by the asset management office during pre-seizure planning to allow, for example, access or custody by an asset manager, measures to protect the property from damage or loss, or deduction of expenses from business earnings.
- Defining any necessary asset management exceptions to the seizure order, including permitting occupancy of a home by minor children or other relatives of the defendant, or allowing the asset to be used for living, legal or business expenses, or payment of other liabilities.

under the authority of a court that has decided that the applicable legal standard (for example, probable cause in some common law jurisdictions, or reasonable suspicion in civil law jurisdictions) has been met to show that the asset was an instrument or proceeds of criminal activity. Depending on the specific situation or asset type, though, the asset may be physically seized, placed under a court's authority without taking physical possession (constructive seizure [common law] or conservative seizure [civil law]), or restrained through other methods.

If provisional measures are deemed necessary, application must be made to the court. Applications for provisional measures should be carefully written to correspond to the confiscation sanction(s) that may apply to the restrained or seized assets. For this reason, the investigative and prosecutorial teams should consult with the asset management office.

The asset management office may advise not only whether assets should be restrained or seized (as previously discussed), but also whether any specific powers and conditions should be included in the seizure order to facilitate the management of the asset. The early involvement of the asset management office will enable consideration of any logistical arrangements needed to achieve the physical control of the assets.

3.13.2 Timing of Provisional Measures

Proper timing of provisional measures is one of the most challenging parts of asset confiscation work. If an application for confiscation or other provisional measures is made too early, the target may be tipped off and may cease activities. Bad timing can result in difficulties gathering additional evidence and identifying other accounts, targets, and so on. However, if the measures are imposed after the target is aware of the investigation, the assets will most likely be dissipated or hidden. When the provisional measures involve a foreign jurisdiction, interaction through informal channels to exchange information becomes critical, as does effective formal cooperation.

As a result, practitioners investigating offenses must coordinate with practitioners seeking recovery of the assets, including the asset management office. Practitioners should begin consultations early in an investigation and before taking any overt action against a target. They should develop a strategy that will permit criminal investigation objectives to be achieved together with the restraint or seizure of the target's assets at the optimal time.

It is important to note that provisional measures may be subject to court-imposed conditions to maintain restraint of an asset until a forfeiture decision is made. As part of pre-seizure planning, prosecutors, law enforcement agencies, and the asset management office should understand the conditions and deadlines to ensure compliance and continued restraint of the asset. If there are concerns about meeting such conditions, premature restraint of the asset should be avoided.

3.13.3 Physical Custody

Assets typically taken into physical custody are tangible personal property, such as movable assets like vehicles, aircraft, vessels, jewelry, and artwork. Such assets are easier to sell, transfer, or conceal than real property or intangible personal property.

Physical custody of the asset may be taken by the asset management office with the requisite authority, or as specified in the seizure order. Alternatively, the asset management office may participate in the overt action with other law enforcement agencies to ensure that all the policies and procedures regarding the asset seizure are properly followed. During the overt action, the asset management office focuses on the targeted assets, while the law enforcement agencies focus on any targeted individuals and the security of the operation. In such cases, the asset management office should seek to ensure that the seizing instrument and associated warrants

Box 3.8. Good Practice: Planning for Taking Physical Custody

- **Assess risks:** Identify potential risks (for example, violence, hazards, legal challenges, and weather conditions) and develop strategies to mitigate those risks.
- **Develop a seizure plan:** Outline the steps involved in the seizure process, including the roles and responsibilities of each team member; the equipment, information and resources needed; and the procedures for securing and transporting the seized assets. Ensure the readiness of any private sector asset managers with seizure or post-seizure responsibilities. If hazardous materials or dangerous goods will be seized, confirm the special precautions for the seizure or conditions for their destruction.
- **Obtain legal advice:** Consult with prosecutors; obtain search warrants, writs of entry, or other legal authorizations to confirm that the seizure will be conducted in accordance with applicable laws and regulations. If necessary, ensure that relevant asset management officers or asset managers are included in the applicable orders.
- **Train personnel:** Ensure that officers involved in the seizure process understand the legal and operational requirements of the seizure process. This may involve providing training on search and seizure laws, evidence handling procedures, and safety protocols.
- **Coordinate with other agencies:** Inform other domestic and international agencies involved in the case of the impending seizure. Consider developing a joint seizure plan, sharing information and resources, and coordinating efforts to ensure that the seizure is conducted legally and does not harm any other ongoing investigations.
- **Appraise the asset:** Arrange for the appraisal of the asset as soon as practicable after taking physical custody. Record the appraisals with the asset management office to protect against claims for loss of value while in custody, in the event of return of the asset to the target

or writs of entry provide each agency with the necessary information and legal authority for its seizure and post-seizure responsibilities.

If the asset management office does not participate directly in the seizure, the investigating agency will take physical custody of the assets and subsequently transfer them to the asset management office. This transfer may be carried out by the seizing agency (for example, where international partners seize artwork overseas), by the asset management office itself, or by a third party. In any event, the asset management office should always comply with the applicable procedures for documenting the receipt of these assets and entering them into the proper register of assets.

Receipt of Assets

To properly document the receipt of assets, the asset management office should ensure, at a minimum, the following:

- An inventory that describes the assets' circumstances and any irregularities (for example, any marks, scratches, or damages to a vehicle)
- Proper identification of the assets using suitable techniques, such as photographs, videos, photocopies, copies from land registries, real property plot maps, or GPS locations (for rural areas)
- Protective measures to avoid damage or loss (for example, by marking and securing items in lockers)
- Registration of restraint measures on public registers
- A technical report from an expert, evaluating the assets' state, depreciation, market value, quality, and any relevant circumstances (such as perishable character or fast-decreasing value)
- Availability of human and material resources related to the secure and effective carriage of the goods (ideally, as foreseen in the initial planning).

Box 3.9. Malaysia: Claims for Mismanagement of Assets in Malaysian 1MDB Case

Rosmah Mansor, the wife of former Malaysian prime minister Najib Razak, was charged with corruption in 2018 in connection with the 1MDB scandal. The 1MDB scandal involved allegations of embezzlement and money laundering of billions of dollars from a state investment fund, 1Malaysia Development Berhad (1MDB), which was set up by Najib. In November 2021, Rosmah was found guilty on all charges and sentenced to 12 years in prison. The court found that she had solicited and received bribes in connection with a solar energy project and that she had abused her position as the wife of the prime minister to influence the award of the contract.

In 2019, Malaysian law enforcement officers seized a variety of items in connection with charges against Rosmah. These items included 11,991 pieces of jewelry, 401 watch straps, 16 watch accessories, 234 pairs of spectacles, and 306 luxury handbags. Additionally, cash amounting to approximately US\$28 million was seized.

In 2020, Rosmah filed an appeal against the forfeiture action, alleging that the police ruined the handbags—worth millions of dollar—by marking them with “magic ink” during seizure, and further when they sent the handbags to a storage facility that was not climate-controlled.

The failure to follow proper custodial procedures may lead to significant claims for damages if the forfeiture is not upheld upon appeal, or significantly lower proceeds from sale if the forfeiture is upheld. Such losses may be avoided with stronger policies or training. This case also highlights the importance of contracting specialized private sector actors to help with the management of specialized assets.

Source: “1MDB Scandal: Luxury Bags ‘Worth Millions’ Seized from Malaysia’s Ex-PM Najib Razak and Wife Ruined by ‘Magic Ink’ Pens,” *Straits Times*, June 11, 2020. <https://www.straitstimes.com/asia/se-asia/1mdb-scandal-luxury-bags-worth-millions-seized-from-malysias-ex-pm-najib-razak-and>

As soon as practicable after seizure, each asset should be appraised to document its value at the time of seizure. The asset management office should maintain a record of the appraisal to protect against claims for loss of value while in custody in case the asset is ultimately returned to the target.

Asset Register

The asset management office should maintain an updated and detailed register of all seized assets. This register must describe any changes in the assets' physical condition or legal situation and include information such as the criminal proceedings leading to the seizure, a copy of the judicial order, a registry certificate noting the provisional embargo, a copy of any technical reports, a copy of the reception document, the reception and registration date and time, and the name of the civil servant responsible for the goods.

This register should be kept up to date and should reflect any judicial or administrative orders related to management, subsequent events, or ultimate destination of the goods. In addition, the register should clearly identify relevant data points such as type of asset, date of receipt, date of disposal, and disposal proceeds (see chapter 2, section 2.7).

Box 3.10. Good Practice: Seizing Cash

Seizing cash requires special consideration because of its value and portability. The asset management office should establish procedures for cash seizures with clear roles and responsibilities to avoid theft or loss and ensure transparency. Good practices include the following:

- Physical counting at time of seizure should be witnessed and documented by officers from the investigating agency and the asset management office. If only one agency is present at the seizure, two officers should be present for the physical counting and documentation of the cash value. It may be possible to borrow a currency counting machine from the deposit institution. Such machines count and photograph each bill and can also identify counterfeit currency.
- Contracting armored vehicle services to transport the cash should be considered.
- Immediately after seizure, the cash should be taken to a bank where the government has a segregated seized asset account. At the bank, the cash should be physically counted again, witnessed, and documented by different individuals. The documentation of the physical count at the time of seizure should be reviewed and verified against the amount to be deposited to ensure no amounts are missing.

If the seized cash will be used as evidence, different procedures may apply. Once the cash is no longer needed as evidence, physical counting and verification of the amount received should be undertaken prior to deposit in accounts controlled by the asset management office.

3.13.4 Constructive Seizure and Other Restraint Measures

Constructive seizure (common law) or conservative seizure (civil law) are interim measures that place an asset under a court's authority without taking physical possession. Such measures may be appropriate for assets such as real property, which cannot be hidden or moved from the jurisdiction, or where effective restraint measures exist to prevent the target from selling or transferring the asset through notice to the public, restrictions in public records, or other actions.

Available measures vary by jurisdiction and type of asset. For example, real property may be restrained by notifying the relevant authorities and stakeholders of the government's claim to the property and preventing the transfer or sale of the property from being registered in public records. In some common law jurisdictions, a *lis pendens* ("suit pending") is recorded in the land registry, which informs all parties who could be interested in the real property of the government's claim against that property. In some civil law jurisdictions, similar actions are *saisie immobilière conservatoire* or *saisie conservatoire d'immeuble*. These terms refer to a legal mechanism that allows a creditor to secure a claim against a debtor's property by obtaining a court order to freeze the property's transfer or sale until the debt is paid or the dispute is resolved. In other jurisdictions, the court order or a notice may be posted to the property, stating the property is under the court's jurisdiction and cannot be transferred until the court case is adjudicated.

The process for constructive seizure or conservative seizure of an asset will vary depending on the jurisdiction, the circumstances of the case, and the type of asset. In addition, in most jurisdictions, notification requirements must be followed and possibly published again from time to time to maintain constructive custody.

Restraint measures are mandatory orders that operate similarly to injunctions issued by a judge, court, or prosecutor that restrain any person from dealing with or disposing of the assets specified in the order, pending the determination of confiscation proceedings. Unlike seizure orders, restraint orders do not result in the physical possession of the asset. They are interim measures that place an asset under a court's authority without taking physical possession. Available restraint measures may include freezing or monitoring, depending on the type of asset. For example:

- **Financial accounts or instruments:** The court restrains the assets by sending an order to the financial institution that prohibits transfer of the asset until conclusion of the forfeiture proceedings.
- **Intellectual property:** The court may restrain intellectual property by notifying the relevant authorities (for example, patent, trademark, and copyright offices) and owners of the government's claim to the intellectual property and preventing the transfer or sale of the intellectual property.
- **Digital assets:** Assets such as cryptocurrency or nonfungible tokens may be frozen in a digital wallet or account, preventing the transfer or sale of the assets, and by ordering virtual asset service providers to freeze the account.

- **Artwork:** If the artwork is held by a gallery, auction house, or other custodian, the court may order the artwork to be held in custody and prohibit the custodian from facilitating its transfer or sale.
- **Business assets:** The court may order restrictions on the transfer or sale of shares in a company through notice to the shareholders of record, notice in the share registry, or prohibition of trading of listed shares.

These preservation methods may vary by jurisdiction. For example, in the United Kingdom, an interim freezing order (IFO) may be made if the court has issued an unexplained wealth order (UWO) regarding the property in question.¹⁴ Similarly, the process of obtaining and maintaining a restraint order on an asset may depend on the jurisdiction, the circumstances of the case, and the type of asset. Here, an important consideration is which measures may be compelled administratively or by a prosecutor, and which require a court order. For instance, in some jurisdictions, an administrative official, typically associated with the financial intelligence unit, has the authority to issue brief preservation orders to financial institutions. This is an efficient, short-term tool that affords the police, prosecutor, or senior government official time to seek an extended order from a court.¹⁵ These administrative freeze orders are sometimes limited to cases involving specific underlying offenses (such as political corruption or terrorism), but, where possible, it is generally preferable to include a broader category of offenses.

Typically, restraining or preservation orders are directed at the person or entity that has custody of the asset. Where the assets in question are bank accounts, the orders should be directed at the bank. This is generally effective because a breach of the preservation order can be enforced against other assets of the financial institution. To maximize the preserved value, such orders should include language to prevent the withdrawal of any funds from the account while allowing deposits to continue. Depending on the jurisdiction, these restrictions may be imposed under specific time limits or until the forfeiture proceedings are concluded.

Once an asset has been restrained, the asset management office's involvement in overseeing it is typically limited to including it in the asset register and disposing of it after forfeiture occurs. However, if there is a concern or risk that a preservation, freeze, or restraining order may be ignored, additional measures may be necessary, such as seeking a court order or involving law enforcement agencies. For example, substitute assets (such as currency, jewelry, vehicles, and other movable property held by the target or the target's family) may be seized if available.

3.14 Unexpected Seizures

Seizures may arise without the possibility of completing pre-seizure planning, either partially or entirely. For example, obtaining information necessary for pre-seizure planning (for example, visiting a property) may not be possible prior to seizure without compromising the criminal

investigation(s). Unexpected seizures may occur when a targeted movable asset (for example, an aircraft or a marine vessel) is located and there is a significant risk of the asset being removed from the jurisdiction. Assets may be identified and seized during an unrelated law enforcement action such as a routine traffic stop, random search, or authorized search in another matter that uncovers a previously unknown asset connected to a target. In complex multijurisdictional cases, pre-seizure planning may not be completed prior to seizure because of the time required to understand and resolve differences in legal systems and procedures between jurisdictions.

In cases in which the asset management office is involved before the seizure but on short notice, a rough assessment of the net equity analysis should be made, including an analysis of the type, condition, and value of the assets as well as confirmation that the target actually owns the asset. If immediate seizure is necessary, this analysis will necessarily be based on a rough assessment. However, if the seizure can be postponed, a realistic estimate of the condition and value of the property, the extent of the target's interest, and identification of potential third-party claims should also be made. Consideration should also be given to whether the seizure can be postponed for completion of pre-seizure planning or whether alternatives to seizure, including constructive custody, may be available.

In cases in which the asset management office has not been involved prior to seizure, pre-seizure planning activities (such as conducting a net equity analysis, identifying the asset's ownership and any third-party interests in the asset, planning for asset management during custody, and identifying likely disposal options) should be completed and documented as soon as practicable. A review to ensure that the assets were legally seized may also need to be undertaken.

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Notes

- 1 Seized Property Management Act, sec. 9(a).
- 2 Asset Forfeiture Code, created by Law 1708 of 2014 (Codigo de Extinción de Dominio).
- 3 United Nations Convention against Corruption, art. 31.
- 4 Among other jurisdictions, all European Union (EU) member states (except for Cyprus and Malta) allow value-based confiscation. See Center for the Study of Democracy 2014, p. 18.
- 5 See Brun et al. 2021, section 7.5, for further information on legal consideration regarding third-party interests.
- 6 See Stephenson et al. 2011, barrier 29 at p. 94.
- 7 See, for example, "Buyers Shun Confiscated Criminal Properties," *The Gleaner*, July 31, 2022, <https://jamaica-gleaner.com/article/lead-stories/20220731/buyers-shun-confiscated-criminal-properties>.
- 8 See, for example, "Items from 'Whitey' Bulger's Personal Collection Sell at Auction," *ABC News*, June 25, 2016, <https://abcnews.go.com/US/items-whitey-bulgers-personal-collection-sell-auction/story?id=40128780>.
- 9 See Brun et al. 2021, chapter 7, section 7.5, "Third-Party Interests."
- 10 *United States v. Bulger*, Criminal Action No. 99-10371-RGS.
- 11 An interpleader action is a legal proceeding in which a third party who is holding property that is claimed by two or more parties asks the court to determine who has the right to the property. The third party, known as the stakeholder, is usually someone who is not involved in the dispute but is holding the property until the dispute is resolved. The stakeholder initiates the interpleader action to avoid being sued by both parties and to have the court decide who is entitled to the property. The court will then determine the rightful owner of the property, and the stakeholder will be released from any further liability.
- 12 For an example in the United States, see 18 U.S.C. § 983(d)(5).
- 13 As available in common law jurisdictions such as Australia, Canada, the United Kingdom, and the United States, a lis pendens provides general notice that a property is involved in a pending civil or criminal legal proceeding. A lis pendens is recorded in the real property records of the jurisdiction where the property is located. While recording a notice of a lis pendens is not a seizure of the real property, it is a cloud on the title that effectively prevents the owner or claimant from succeeding in a disposal action, refinancing, or obtaining of a secondary mortgage to reduce equity or avoid forfeiture. For an example in the United States, see 18 U.S.C. § 985(b)(2).

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- 14 See Brun et al. 2021, chapter 3, box 3.11, “United Kingdom: Requirements for Issuance and Execution of Unexplained Wealth Orders.”
- 15 In the Anti-Money Laundering Act 1999 (Thailand), section 48 empowers the Transaction Committee to restrain or seize for a period not exceeding 90 days “if there is a probable cause to believe that there may be a transfer, distribution, placement, layering or concealment of any asset related to predicate offense.” In case of emergency, the Secretary-General may issue the order. Relevant regulations relating to taking-into-custody procedure, preservation, maintenance, auction, and so forth may apply.

4 Management of Seized Assets

4.1 Introductory Remarks

When the proceeds or instrumentalities of crime are identified during an investigation, investigators and prosecutors must consider whether there is a risk of dissipation or concealment of the assets or continued use of the assets in criminal activity prior to a forfeiture decision. In both common and civil law jurisdictions, two distinct measures are available to control and preserve assets that may be subject to confiscation: seizure and restraint.¹ *Seizure* means taking physical possession of the targeted asset. *Restraint* is a mandatory order made by a judge, court, or prosecutor that restrains any person from dealing with or disposing of the specified assets, pending the determination of confiscation proceedings.² Typically, restraint measures are applied to assets held by a third party (for example, accounts with financial institutions), but they may also be applied to assets held by the target or his or her family members.

The purpose of managing seized and restrained assets is to preserve value until a confiscation decision. The asset management office ensures that the seized assets are properly maintained and secured so that value is not lost or diminished. As restraint orders do not result in physical possession, the asset management office's involvement in the oversight of restrained assets is often limited to inclusion of the restrained assets within the asset register and disposal after a forfeiture decision. Accordingly, this chapter focuses on the management of seized assets. However, the information presented may also apply to forfeited assets awaiting disposal by the asset management office. For a more detailed discussion of the management of different types of assets, see chapter 6.

Failing to properly manage seized assets impedes the recovery of the full value of stolen assets. If seized assets are not managed well, their value may decrease significantly by the time of the forfeiture decision. It is possible that the seized asset may not be forfeited ultimately, and the court will order the return of that asset to the defendant. If an asset was not managed correctly, the government may be held responsible to the defendant for the decrease in value of the asset. Additionally, the asset management office may suffer reputational damage with judicial and political authorities. Further, public confidence and support for forfeiture frameworks erode when the government is required to compensate a

defendant for mismanagement of a seized asset rather than use public expenditures for services such as schools, hospitals, or roads.

In multijurisdictional cases, if requested jurisdictions do not maintain assets properly, the trust and confidence of foreign counterparts will be impaired, possibly negatively affecting future international cooperation. An originating jurisdiction that recovers significantly less than expected in one case may hesitate before attempting asset recovery in the future, particularly where the monetary amounts are less significant.³ This loss of value may diminish political will to combat corruption and undermine public confidence in the rule of law.

Preserving asset value during custody is more easily said than done. Assets may be held in custody for an uncertain period because of the length of the forfeiture proceedings, and frequently longer than anticipated during pre-seizure planning. Asset valuations may fluctuate for reasons beyond the control of the asset management office, including issues with the asset not identified during pre-seizure planning, unforeseen third-party claims, changes in market conditions, and natural disasters. As discussed in chapter 2, to properly manage assets, the asset management office must have comprehensive, clear, and flexible policies and procedures as well as an effective inventory system and accounting practices. These policies must be flexible enough to accommodate very different asset classes and specific circumstances but also rigid enough to be guiding principles for good management and for ensuring integrity and transparency.

Ideally, asset management programs will take care of assets in their custody as if they were their own. In addition, to preserve value prior to a forfeiture decision, the asset management office should:

- Maintain assets in custody
- Sell seized assets prior to a confiscation decision (interim sale), if available
- Use seized assets pending final confiscation (interim use), if available and value is preserved
- Contract and manage experienced contractors to handle certain asset classes or complex assets
- If ordered by the court, return seized assets promptly to the defendant or third party.

4.2 Maintaining Seized Assets

4.2.1 Regular Inspection

Regular inspections of seized assets are an important part of an asset manager's responsibilities to ensure that seized assets are properly maintained and preserved. Depending on the type of asset, the asset management office should establish policies for conducting regular physical inspections (such as monthly or quarterly) to ensure that every

seized asset stored by the office or a third party is protected against loss or damage.

During these inspections, the asset manager should take the following steps.

- **Verify the inventory:** The asset manager should verify that the inventory of seized assets is current and accurate. This involves accounting for all assets and confirming that their condition and location match the inventory records.
- **Check for damage:** The asset manager should inspect each asset for any signs of damage or deterioration. This includes checking for wear and tear, rust, corrosion, or any other damage that may have occurred while the assets were in their custody. The asset manager should confirm that the asset is being properly maintained at a level appropriate for its value.
- **Ensure proper storage:** The asset manager should ensure that the seized assets are stored in a secure and appropriate location. This may involve checking that the storage facility is clean, dry, and free from pests or other hazards (see box 4.1).
- **Review legal status:** The asset manager should periodically review with law enforcement or prosecuting authorities to confirm the legal status of each seized asset to ensure that it is still under their custody and that there are no pending legal actions or claims against the asset.
- **Update records:** The asset manager should update the inventory records to reflect any changes in the condition or location of the seized assets. This will help ensure that the inventory remains current and accurate.

Box 4.1. Lebanon: Massive Destruction Caused by Improper Storage of Hazardous Confiscated Assets

In 2013, a cargo ship (the *MV Rhosus*) was abandoned by its owner (Igor Grechushkin, a Russian businessman) in the port of Beirut after it experienced technical problems and was detained because of safety concerns. Lebanese authorities confiscated the cargo of approximately 2,750 tons of ammonium nitrate (a highly explosive material). Despite warnings from customs officials about the potential danger, it was stored in a port warehouse without proper safety measures.

On August 4, 2020, the warehouse exploded, killing 217 people, injuring 7,000, and displacing 300,000. The blast was one of the largest nonnuclear explosions ever and caused estimated damages of US\$10–15 billion. An ongoing economic and political crisis was significantly deepened as a result. The incident illustrated the imperative of responsible management of confiscated assets, particularly hazardous or dangerous materials, and the potential consequences of failing to do so.

In addition, the asset manager regularly documents the assets and their condition, including, where appropriate, photographs or videos. Records should be kept of any maintenance or official inspections performed.

4.2.2 Cost Management

Cost management is paramount to an efficient asset management program. Possible asset management expenses during custody include expenses of transportation, storage, security, insurance, maintenance, service fees, utilities, mortgage or rental payments, salaries, private sector contractor fees, and even disposal, such as publicity and auction venue rental in the case of interim sales. The maintenance expenses of some asset classes can be significant (see box 4.3 about the maintenance expenses for a luxury yacht). To maintain such assets, an asset management office must have sufficient financial resources through the anticipated date of disposal after forfeiture.

Asset management offices should seek to manage costs effectively. The asset management office should seek to preserve the value of assets, at an appropriate level of care for the asset type and under conditions specific to the asset. Thus, the quality of storage and maintenance should be based on certain minimum present-value thresholds, which vary by asset class. As previously noted in section 3.12, there may be alternatives to seizure. Further, as discussed below in section 4.3, several international standard setters recommend interim sales of seized assets, particularly perishable or rapidly depreciating assets or those that can be stored only at a disproportionate or excessive cost. In some jurisdictions, destruction of low-value assets may also be considered with the court's permission if the cost of storage or management outweighs the value of the asset. In other jurisdictions (for example, in the Czech Republic), destruction of low-value assets can be considered only if the seizure order is cancelled and the owner refuses to take the assets back or is not contactable. In other jurisdictions, seized assets may be destroyed only with the owner's consent. Alternatively, the owner may be given the option to participate in the payment of maintenance costs to avoid destruction or interlocutory sale of the assets.

Asset management offices should seek advice from other asset management practitioners on cost management or other ways to reduce operational costs. One example of improving asset management is to consider computer-based solutions for recordkeeping purposes. This can help streamline processes, increase efficiency, and reduce the risk of errors. Additionally, other asset management practitioners may be able to suggest cost-effective inventory techniques or alternatives to commercial inventory programs.

Efficiency of the asset management program requires financial continuity. Where the program relies on government funding, predictable and adequate financing is critical. Although asset management offices may use proceeds from the forfeiture fund for asset management costs, it may be years before an asset management office can rely on such funds

for sufficient and predictable funding. An expense account from which payment of costs associated with interim use and interim management can be made, including the costs of making improvements to assets to achieve better returns upon sale, should be established.

4.2.3 Periodic Valuations

The asset management office should establish a framework for the periodic valuation of assets under management. Updated valuations of seized assets are generally needed prior to sale or disposal, especially if a significant period has passed since seizure. Valuations may also be required before important court hearings related to the confiscation proceedings. With any valuations, the asset management office should caution that they are only estimates. The actual realization of value from the asset may differ from any valuation.

Simple assets such as bank accounts or publicly traded securities can be valued daily at a low cost, but more complex assets require specialists who charge for their expertise. Periodic valuations help keep inventories accurate and inform decisions about maintenance, storage, and disposal. For example, a poorly maintained property can decrease in value from the time of its initial appraisal or may change in value due to factors unrelated to the asset itself, such as prevailing economic conditions or neighborhood changes. Similarly, the value of artwork can fluctuate for a variety of reasons, including death of the artist or an exposition at a major museum.

Valuations may need to be updated from time to time so that informed decisions about continued appropriate levels of care for storage and maintenance can be made, as well as to confirm whether the asset continues to meet minimum value or net equity thresholds. Asset management offices should consider developing a contingency plan with alternatives in case the asset deteriorates more than anticipated during custody or changes in circumstance significantly affect the projected disposal outcome. In such instances, applying to the court to request an interlocutory sale order to sell the asset immediately, if permitted, may be one option to preserve value. Unfortunately, because of the length of forfeiture proceedings, greater deterioration of asset value than anticipated may be common, especially for conveyances such as vehicles, marine vessels, or aircraft.

Real property can be valued annually, and online sources may be available for rough estimates in some jurisdictions. Vehicles may need to be appraised only before disposal, and again online resources may be available for this purpose. For operating businesses, it is necessary to review the company's accounting records or financial statements, which can be done once or twice a year. Regardless, it is good management practice to conduct ongoing equity assessments in accordance with the agency's policies and procedures. Records of the ongoing valuations should be maintained in the asset register, with the original appraisal at the time of seizure.

Finally, as part of the ongoing valuation process, the asset management office should consult with prosecutors to confirm whether the government

continues to be likely to prevail in the forfeiture proceedings. In addition, the asset management office should check regularly to see whether there are any third-party claims against the seized assets.

4.2.4 Consultations

Private contractor asset managers should consult as appropriate with the asset management office, the prosecutor, the court, or other practitioners regarding asset management decisions as set forth in their contractual terms of reference. Consultation can also be beneficial when a management proposal or decision may affect the value of the restrained assets. Such consultations may provide protection against claims for losses resulting from mismanagement, particularly if these consultations include the target, the practitioner who obtained the restraint order, and any third party with an interest. Advice by all parties consulted should be recorded in writing and considered seriously. However, the asset management office has the final decision, subject to the direction of courts. Nonetheless, the asset management office should not interfere with the management carried out by private contractor, provide consultations, or give any advice outside the stipulated contracted terms.

4.3 Interim Sales

Seized assets may be sold before the final adjudication of the case, if permitted by the jurisdiction's forfeiture laws, through an interim sale order by the court or with consent of the asset's owner. Different terms are used by jurisdictions for this action, such as interim sale, pre-judgment sale, pre-confiscation sale, pre-trial sale, interlocutory sale, early sale, or anticipated sale. Several international initiatives encourage jurisdictions to allow interim sales of seized assets within their forfeiture laws, especially in cases of perishable or rapidly depreciating assets (G8 Lyon/Roma Group Criminal Legal Affairs Subgroup 2005; FATF 2012).⁴

To preserve the value of a seized asset, selling it as soon as possible after seizure is recommended, thus avoiding the asset's depreciation or deterioration as well as maintenance or storage costs. The proceeds of the sale are then placed in a secure account, with any interest, all to be paid to the ultimate beneficiary of the confiscation decision (that is, the government, the defendant, or a victim). All parties involved will be informed of the sale and the proceeds to be directed according to the forfeiture decision.

Some jurisdictions allow interim sales of assets (UNODC 2017)⁵ such as the following:

- Perishable assets (for example, agricultural goods)⁶
- Rapidly depreciating assets that are easily replaceable (for example, aircraft, marine vessels, and vehicles)⁷
- Dangerous or hazardous assets (or their storage) that pose a public risk (for example, flammable goods)

- Assets that are overly complex, burdensome, or costly to manage or require special expertise that is not readily available (for example, livestock)⁸
- Assets with storage or maintenance costs that are disproportionate to their value⁹
- Easily replaced assets¹⁰
- Abandoned assets
- Assets that would be in the objective best interest of the owner to be sold
- Assets to be sold with the consent of the owner.

A jurisdiction's forfeiture laws should specify the circumstances under which interim sales of seized assets are allowed. Generally, interim sales are not permitted if the assets are needed for evidentiary purposes or are unique. In some jurisdictions, to protect the property rights of the owner, consent of the owner or other procedural safeguards may be required for interim sale of the seized assets. In some jurisdictions (for example, Australia and the Netherlands), an interested party may be able to prevent an interim sale by providing a financial guarantee to secure the return of the asset. In some jurisdictions, the owner is allowed to oppose the interim sale before a judicial officer, especially if the asset has sentimental value or if there are other exceptional reasons against an interim sale. In many jurisdictions where owner consent for interim sale is required, owners frequently refuse such sales on noneconomic grounds, such as a desire to refuse cooperation with all proceedings. In such cases, jurisdictions may consider adding provisions requiring contribution by the owner to maintenance costs of the seized assets in lieu of interim sale.

The proceeds of the sale should be secured in accordance with the jurisdiction's forfeiture law or the court order. For example, the proceeds may be deposited in the following:

- A bank account controlled by a court (the Czech Republic)
- A consolidated judicial bank account (Brazil)
- An account handled by the asset management office (France and Romania)
- A trust or escrow account in the name of the defendant supervised by a court-appointed trustee (Australia, New Zealand)
- An account held by the asset management office for deposit of all proceeds of pre-confiscation sales (United States).

In some jurisdictions, the interest earned by these proceeds remains with the government, while in other jurisdictions, the interest is assigned to the defendant if, on adjudication, the asset must be returned.

In general, an increasing number of jurisdictions are adopting forfeiture laws permitting interim sales. A 2021 survey of jurisdictions conducted by

the United Nations Office on Drugs and Crime (UNODC) found that 13 of 23 respondent jurisdictions allow interim sales, but respondents noted continued barriers, such as legislative, operational, or political reluctance (UNODC 2021).

In some jurisdictions, such as the Netherlands and Costa Rica, most, if not all, assets can be sold after seizure. The forfeiture laws of some jurisdictions focus on procedural issues, rather than the nature of the seized assets. For example, in Canada, New Zealand, and the United Kingdom, assets can be sold to pay for legal representation and expenses incurred for other seized assets, and in Romania, vehicles can be sold when the owner has absconded (see box 4.2).

Where interim sales are permitted under forfeiture laws, most jurisdictions require the consent of the owner and the relevant agency responsible for enforcing the seizure order. If consent is not given, a court or competent authority must authorize the interim sale. In the United States, interim sales (interlocutory sales) are permitted only if the prosecution and the defendant agree not only to the sale, but also to the price and other considerations, which, for certain asset classes, could be particularly difficult.

The specific procedure for the interim sale varies by jurisdiction, but most jurisdictions require some form of judicial review. However, in some places such as Colombia, Costa Rica, Honduras, and Peru, interim sales are allowed with fewer procedural constraints.

4.4 Interim Use of Seized Assets

In some jurisdictions, seized assets can be used until a decision regarding their confiscation or return is made. For example, dependents or innocent

relatives living in a residential property subject to seizure may be allowed to stay in the property until a final decision, provided that they agree to conditions set forth in an occupancy agreement. Courts may order the disbursement of funds from restrained assets for the living, legal, and business expenses of a target and their dependents (Brun et al. 2021, 207). In most cases, the expenses will be determined by law or fixed by the court, although the asset management office may occasionally be involved in determining what is considered reasonable for certain purposes—an assessment that the target can dispute by making an application to the court. Because the payment of these expenses is frequently disputed before courts, it is important for these decisions to be made carefully, with records of these decisions and any transactions connected with them retained.

Box 4.2. Romania: Interlocutory Sales during the COVID-19 (Coronavirus) Pandemic

Because of the impact of the COVID-19 pandemic, in Romania interlocutory sales were organized—starting in June 2020—only via online systems, which provided a boost in the efficiency of such auctions. Currently, the information technology (IT) solution provides a rate of 105 percent conversion into money as the platform secures connection with a wide public (15 percent from abroad). With this IT platform, public auctions with more than 200 participants were organized.

Leases on residential and commercial property subject to seizure may be allowed to continue. Similarly, businesses that are operating as a going concern can be taken over by an interim manager or a court-appointed third-party manager, rather than closing the premises and ceasing operation. This allows the property to continue to be used productively, maintaining employment, generating income, and potentially leading to a higher return if sold after forfeiture, rather than sitting vacant. Rental payments or income can be deposited in a designated account to cover the expenses costs associated with interim use and management, including the costs of making improvements to the assets to achieve better returns upon sale.

If interim sale is not possible or legally permitted, interim use may be a productive way of preserving the value of seized assets and avoiding depreciation. However, interim use raises potential cost issues, particularly if the court orders the return of the asset. The use of a seized asset may diminish its value, requiring restitution by the government in such an instance. Some jurisdictions (for example, Colombia, Costa Rica, and Peru) try to mitigate these risks by allowing interim use with certain requirements, such as a guarantee or surety by the entity, institution, or agency that will use the asset. If the asset will be used by law enforcement or other government agencies, such use should be permitted with court authorization, within the forfeiture legal framework, or pursuant to clear policies and procedures of the asset management office or the involved agency.

Interim use may also raise significant ethical and economic concerns. The use of seized assets by law enforcement agencies has come under scrutiny because of concerns that officers may be motivated to seize assets for their own benefit. For example, law enforcement may seek to use seized vehicles for transportation or surveillance. A conflict of interest may arise, as law enforcement officials may have little incentive to pursue the confiscation proceeding to its conclusion if they are already using the seized asset. This could result in the owner being deprived of their property without a court judgment. Additionally, this practice may incentivize law enforcement to seize assets without sufficient evidence. The G8 best practices (G8 Lyon/Roma Group Criminal Legal Affairs Subgroup 2005) recommend that seized assets should not be used during the interim phase by law enforcement personnel involved in a seizure unless there is a compelling purpose, such as furthering the investigation. Nonetheless, some jurisdictions seek to avoid any appearance of seizing an item specifically for agency use by mandating interim sales or permitting use of the asset (for example, a vehicle) in a district or region outside the one where it was seized.

If interim use is permitted, the jurisdiction's forfeiture laws or the asset management policies should specify the circumstances under which use will be permitted, and procedural safeguards need to be included to protect against deterioration of the asset (see section 2.7). It should also be specified that no assets from victims' cases are to be used.

4.5 Supervision of Contractors

Newly established asset management offices may initially focus on seized bank accounts that can be frozen by a court order. However, as these programs grow, they begin to manage more unique assets, such as movable assets or real property. Furthermore, the asset portfolio may unexpectedly increase significantly from seizures in a grand corruption case. Asset management offices may quickly evolve into multi-million-dollar organizations, with specialized expertise required in diverse areas such as auctions, real estate, aircraft, ranch operations and livestock care, artwork, and virtual assets—areas far beyond the in-house capabilities of the asset management office. Within these areas, expertise on industry practices for transportation, storage, security, insurance, maintenance, utilities, taxation, mortgage or rental payments, salaries, government regulation compliance, and even publicity and auction venue rental for disposals will be required.

Effectively managing a large portfolio of valuable complex assets can be challenging, and mistakes can result in a loss of value. As a result, as asset management programs develop and begin to handle more complex assets and larger quantities, engaging private sector experts becomes increasingly important.

Experienced asset management offices rely on private sector experts, vendors, or contractors for valuation, storage, maintenance, and disposal of assets. Initially, when the US Marshals Service (USMS) forfeiture program began in 1984, it managed most of its operations in-house. However, as the program expanded and gained more assets under management, it faced challenges and eventually realized the benefits of public-private partnerships. As a result, the USMS now has national contracts for every asset type except bank accounts, which are seized in place. In the European Union, asset management offices are expected to become mandatory under the new proposed directive on asset recovery and confiscation,¹¹ and it is common practice to hire contractors.

To manage complex assets effectively, the asset management office should consider contracting private sector experts who specialize in specific asset classes (see box 4.3). These experts are likely to provide better storage, maintenance, and valuation services for the specific type of asset and can assist in managing and disposing of it properly. Although the government will incur costs for these services, the private sector may have lower storage and maintenance costs because of their expertise and economies of scale, as well as industry-specific valuation knowledge and a better ability to dispose of assets to maximize value. This may result in higher net proceeds for the government after deduction of expenses. Additionally, the government can reduce liability and minimize cost variability by contracting set costs for storage and maintenance, thereby converting unpredictable expenses into regular expenses. As the program grows, the asset management office can build a standing roster of private sector experts under contract to ensure that such experts are immediately available to manage seized assets of a particular type as cases arise.

In addition to contractors for specific asset classes, the asset management office may engage general contractors to handle specific asset management or disposal functions. For example, a general contractor may be engaged to handle all aspects of sales and auctions, although the decision about what property will be sold or auctioned may remain with the asset management office. Commercial brokers or auctioneering companies may be engaged to handle consolidated sales of one or more asset classes, such as jewelry, watches, and gemstones, and to conduct consolidated sales whenever possible. For example, in the United States, the US Marshals Service will engage a general contractor to sell in one central location all jewelry seized throughout the jurisdiction. The sales are advertised extensively in trade journals, newspapers, and television, and more buyers are attracted by consolidating the merchandise in one large sale. Online advertisements and bidding are arranged as well.

4.5.1 Identifying Potential Contractors

Asset management offices may use various methods to locate reputable contractors, including the following:

Box 4.3. United States: Expense of Maintenance of a Seized Superyacht

The maintenance expenses of some asset classes can be significant. For example, in 2022, the US Marshals Service seized the *Amadea*, a superyacht with an estimated value of US\$325 million but annual maintenance expenses of approximately US\$10 million.^a Maintaining the superyacht requires a large crew and expensive care because of the hostile environment of salt water and humidity. The yacht must generate its own power and desalinate its own water, and those systems must be maintained. The propellers require regular maintenance to prevent the buildup of barnacles or other marine growth. The yacht must be washed weekly to avoid dirt accumulation that could damage the exterior. The mooring lines must be monitored to prevent breakage in high winds or strong currents. The yacht is normally operated by a crew of 33 but still needs about half that many rotating on board when moored. Impounded vessels can incur daily docking fees of almost \$1,000. The yacht's insurer requires all this maintenance, and paying for the insurance policy is another expense.

To maintain such an asset, an asset management office must have sufficient financial resources and should plan for maintenance expenses before seizing the asset. For complex assets like superyachts, private sector parties should be contracted, since the government may not have the necessary knowledge to manage them. Various types of assets require specific abilities or knowledge that may not be reasonably expected in-house within the asset management office.

a Stephanie Baker, "Seizing a Russian Superyacht Is Much More Complicated Than You Think," Bloomberg, November 6, 2022, <https://www.bloomberg.com/news/features/2022-11-07/russian-oligarch-s-seized-yachts-are-costing-tax-payers-millions>.

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- Contacting local trade associations and professional groups for referrals
 - Advertisements placed in appropriate trade journals and newspapers
 - Approved contractor lists from government procurement agencies or ministry procurement offices
 - Referrals from other law enforcement agencies, asset recovery offices, and asset management offices.

For certain asset classes, such as virtual assets or high-value assets (for example, superyachts or artwork), the asset management office may wish to use international or regional contractors for assistance. Such contractors may be able to obtain higher disposal values through industry knowledge and advertising or by holding sales outside the asset management office's jurisdiction. Referrals may be sought through the American Registry for Internet Numbers (ARIN) networks. The asset management office should conduct due diligence on potential contractors to confirm their expertise, reputation, and financial condition as well as whether the contractors have the requisite capacity and resources (for instance, warehouses, personnel, insurance, and so forth) to undertake the proposed activities. For an example, see box 4.4.

4.5.2 Policies and Procedures

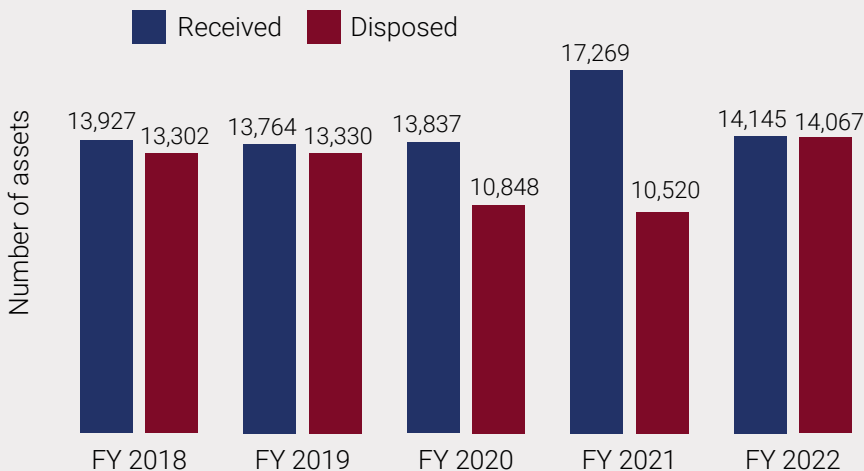
The asset management office should establish policies and procedures for contracting private sector asset managers and for their handling of public assets to ensure transparency, accountability, and integrity, including the following:

- Competitive bidding for asset management contracts and adherence to national procurement policies and procedures
- Clear outlines of the roles and responsibilities of the asset management office and the private sector asset managers
- Reporting requirements
- Internal and external audit requirements
- Specifications for storage and maintenance applicable to the type of asset, and appropriate levels of care based on value thresholds for each asset
- Insurance, confidentiality, and security requirements
- Supervision rights of the asset management office (for example, inspection of records and premises)
- Specifications for disposal, including timing, publicity, and manner of sales
- Special safeguards to ensure that contractors or eventual buyers of seized assets have no ties with program personnel or defendants.¹²

Box 4.4. United States: Assets under Management of the US Marshals Service

In fiscal year 2021, the US Marshals Service (USMS) received 17,269 assets and sold 10,520, resulting in 26,524 assets worth US\$3.38 billion as of September 30, 2021 (USMS 2021, p. 55). The USMS uses predominately private contractors as a cost-effective way to maximize the value of its portfolio through improved management and disposal methods. The system is financed through a forfeiture fund that receives a portion of the proceeds from the disposal of seized assets. The asset management office uses these funds to pay for management costs, including personnel, offices, contractor fees, and legal fees and liabilities.

Figure 4.1. Assets Received and Disposed of by the USMS



Source: US Marshals Service (2022), p. 55.

Contracts with private sector parties should include the applicable procedures and specify the roles and responsibilities of each party. When an asset management program requests a bid from a contractor, it should clearly state the proposed terms of reference (also known as a statement of work) for the contractor.

The asset management office contracts with private sector asset managers with the goal to maximize returns by preserving assets at an appropriate expense level. Thus, contracts with private sector asset managers will establish storage and maintenance responsibilities based on certain minimum present-value thresholds, which vary by asset class (see box 4.5). For efficiency, a well-run program will not make the decision on a

Box 4.5. Good Practice: Setting Value Thresholds for Storage and Maintenance Levels

A good asset management program, for example, in the Netherlands, defines minimum value thresholds over which it will invest in certain tasks and incur expenses and below which it will not. For example, the decision to pay for an indoor storage facility should not be the same for a vintage car or a luxury sports car as it would be for a common car. Depending on the asset value thresholds, a contract for the management of motor vehicles may outline the need for the parking lot to be covered or not, required security specifications (for example, restricted access and video surveillance), and insurance requirements. The contract may specify necessary maintenance tasks, such as regular engine ignition, oil changes, and charging of batteries and whether the cars are to be driven on a regular basis. These contracts may include features such as daily or weekly inventory reports, photos of assets in custody, and specific rules for storage and maintenance.

In some jurisdictions, asset management offices may have policies against seizure of conveyances with values below the minimum threshold. If there are unexpected seizures or if a seized asset depreciates significantly because of the length of the investigation or confiscation proceedings, a good practice is to seek interim sale. Alternatively, some jurisdictions may allow owners to repossess low-value conveyances for a fee plus repayment of the government's legal costs.

case-by-case basis but through pre-established thresholds and valuations by private sector experts to provide objective appraisals of value.

4.5.3 Payment of Contractor Fees

Properly managing assets to maintain their value, including payment of contractor fees, can be expensive and can raise issues of accountability and transparency. Jurisdictions may consider establishing a forfeiture fund and permitting a portion of the proceeds from the disposal of seized assets to be used by the asset management office to pay for management costs, including personnel, offices, contractor fees, and legal fees. Without a forfeiture fund, jurisdictions would have to pay for these costs from general treasury funds, which can be more difficult. To ensure transparency and accountability in the oversight of the asset management program, the asset management office should consider ensuring within the contracts with asset managers the power to conduct audits. These audits can be performed by the jurisdiction's inspector general or a similar office or by external auditors.

4.6 Return of Seized Assets

It is important to manage assets responsibly to preserve their original value to the extent possible, since not all cases will end with a forfeiture order.

The court may order the return of seized assets, or they may be required to be returned by law when:

- The prosecution fails to meet court-imposed conditions or deadlines to maintain the seizure or restraint of the assets
- The criminal case ends with an acquittal of the defendant or lapse of the statute of limitations (box 4.6)
- A plea bargain, settlement, or deferred prosecution agreement is made with the defendant
- Innocent parties successfully defend their interest in the seized assets (for example, a case involving a married couple where one spouse can prove that the asset is not marital property and not the product of any illegal activity)
- After seizure, a third party proves a legitimate claim to that asset (which could have been discovered but was not in pre-seizure planning)
- Non-conviction based asset forfeiture proceedings are contested successfully by a claimant, secured creditor, or innocent third-party owner.

Once the court declines to make a confiscation order, the seized asset should be returned to its owner as soon as possible. The forfeiture legal framework should provide that the asset management office have the legal possibility of disposing of an asset when the defendant does not claim it after a reasonable delay, or if the defendant can no longer be located after a specified period.

In some jurisdictions, liabilities owed by the defendant to the government may be recovered from seized funds before their return. In Belgium, before returning the cash equivalent to the owner, the Central Office for Seizure and Confiscation (COSC), the asset management office, checks whether the owner has any debts due to the state. This mechanism was extended to EU debts in 2018.¹³

If the asset has not been properly managed and the defendant can demonstrate harm or loss, the government may be held responsible for the loss of value to the defendant. As a result, the asset management office may incur financial liabilities as well as reputational harm with judicial and political authorities and the public.

Box 4.6. United States: Management of Seized Nightclub

The Sound Factory was a renowned nightclub in New York City, operating in a five-story warehouse on the West Side Highway and Forty-sixth Street. In 2004, after undercover work, the US Drug Enforcement Administration (DEA) raided it and indicted the owner and operators for drug-related charges.^a It was alleged that drugs were sold in the nightclub, that overdoses were common, and that two patrons had died there from drug overdoses. The DEA and the US Marshals Service had conducted in-depth pre-seizure planning and closed the business (the US government determined that there was a compelling reason against the government continuing to operate a nightclub, especially one with a reputation for the use of illegal narcotics).

The government seized all assets, including furniture, alcohol, and costumes, stored them, and paid for their upkeep. Throughout custody, the US Marshals Service continued to manage the assets to ensure that they would not disappear or lose value. This involved monthly visits to the storage location to take inventory and confirm that everything was in order. To establish that nothing had been moved, pictures were taken during each visit, and any discrepancies were investigated further. These procedures were put in place to reduce the likelihood of assets being lost.

Ultimately, though, after more than a year, the defendant was acquitted, and the government had to return all the assets.^b

a Larry Celona, "Drug Lair' Club Busts," *New York Post*, March 8, 2004, <https://nypost.com/2004/03/08/drug-lair-club-busts/>; Drug Enforcement Administration, "U.S. Charges Owner of 'Sound Factory' Nightclub with Operating as a Narcotics 'Stash House' for the Distribution of Ecstasy, Meth and Other 'Club Drugs.' Club Owner Richard Grant, Two Security Directors and Corporation Charged," press release, March 7, 2004, <https://www.dea.gov/sites/default/files/pubs/states/newsrel/nyc030704.html>.

b Julia Preston, "Owner of West Side Club is Acquitted of Drug-Den Charges," *New York Times*, June 10, 2005, <https://www.nytimes.com/2005/06/10/nyregion/owner-of-west-side-club-is-acquitted-of-drugden-charges.html>.

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Notes

- 1 The terminology for seizure and restraint of assets may vary among jurisdictions. For example, one jurisdiction may "seize" bank accounts, whereas another may "restrain" them. Other jurisdictions have introduced other terms, such as "freezing" or "blocking."
- 2 Judicial authorization is usually required, although some jurisdictions permit restraint to be ordered by prosecutors or other authorities. For example, a prosecutor has the authority to restrain assets in Colombia and Mexico (see, for example, law 793.02, Colombia). Similarly, in Switzerland, restraints ordered by prosecutors are subject to court review on appeal (Criminal Code 311.0, art. 71, para. 3; Criminal Code 312.0, art. 263 [Switz.]).
- 3 In the context of asset recovery in corruption cases, the originating jurisdiction is the jurisdiction where the corruption offense occurred and where the assets were first acquired by the corrupt individual or entity. The originating jurisdiction (as a requesting jurisdiction) may ask for the assistance of another jurisdiction (a "requested jurisdiction") for the purpose of assisting an investigation or prosecution or enforcing a judgment.
- 4 See also, for example, article 10 of directive 2014/42/EU.
- 5 See especially part II, "Interim measures to preserve assets of allegedly illicit origin."
- 6 Interim sales permitted by, for example, Brazil, Canada, the Czech Republic, Lithuania, Peru, Romania, Tanzania, and Thailand.
- 7 Interim sales permitted by, for example, Brazil, Canada, Costa Rica, the Czech Republic, Romania, Switzerland, and Thailand.

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- 8 Interim sales permitted by, for example, Brazil, Colombia, the Czech Republic, the Netherlands, Romania, and Thailand.
 - 9 Interim sales permitted by, for example, Colombia, Costa Rica, the Czech Republic, Honduras, the Netherlands, Peru, and Romania.
 - 10 Interim sales permitted by, for example, Belgium, the Netherlands, and Romania.
 - 11 Regulation (EU) 2018/1805 of the European Parliament and the Council of Europe (November 14, 2018) art. 47 states, "Each Member State should consider establishing a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property."
 - 12 In the United States, it is unlawful for the defendant or the defendant's associates to acquire assets that have been seized.
 - 13 COSC is required to verify whether any taxes are owed before the return of funds (but only when funds are transferred to a COSC account during the interim stage). In cases where debt is identified, COSC can transfer the funds directly to the tax authority. The Law of February 4, 2018, containing the tasks and composition of the Central Office for Seizure and Confiscation, states the following:
Art. 32. sec. 1. The Central office may, on the basis of data available to it under this law, inform the officials responsible for collection on behalf of the Federal State, the Communities and the Regions and the bodies collecting social security contributions, due under the Law of 27 June 1969 revising the Decree-Law of 28 December 1944 concerning the social security of workers and Royal Decree 38 organizing the social status of self-employed workers, of the data available to it pursuant to this law. Subject to the application of Sub-paragraph 1, the Central office may provide the same information to the institutions responsible for the recovery of fiscal or social debts in another Member State of the European Union. sec. 2. The Central office may, without formalities, assign any sum that has to be returned or paid to the payment of claims owed by the beneficiary of such refund or payment to the benefit of officials responsible for the recovery, for the benefit of the bodies collecting social security contributions referred to in Paragraph 1, first paragraph, and in favor of the foreign debts referred to in Paragraph 1, Sub-paragraph 2. Sub-paragraph 1 remains applicable in case of seizure, assignment, competition or insolvency proceedings.

5 Disposal of Confiscated Assets

5.1 Introductory Remarks

The disposal phase involves two responsibilities: (a) recovering all criminal instruments and proceeds from the owner as directed by the court and (b) making sure that the recovered proceeds are allocated according to the confiscation order or domestic laws. This chapter discusses both responsibilities.

Depending on the forfeiture framework, available disposal options for confiscated assets are (a) sale; (b) official use; (c) social reuse; and (d) salvage, scrap, or destruction. Proceeds from disposal are typically allocated to the general treasury (national revenue) fund, a special purpose fund such as a forfeiture fund, or victim compensation funds.

Before disposing of an asset, the asset manager must obtain and keep a record of the court document that confirms the confiscation or disposal order. The asset manager should also note the relevant law that authorizes the disposal in their inventory, asset registry, or other asset management system. Additionally, the method used to dispose of the property must be recorded before the file is archived.

5.2 Sale

After a final confiscation order has been issued, the most common way to dispose of the asset is through sale. To sell the asset, the seller must have proof that they have the authority to transfer title to the buyer on behalf of the government and that the asset is free of any encumbrance. This is typically done by providing the asset manager with a certified copy of the confiscation order that declares the asset forfeited to the government.

Once the decision has been made to sell the asset, the seller's goal is to obtain the best practicable price at the lowest practicable cost. For movable assets, auctions are usually preferred for value maximization and transparency. However, for complex or high-value assets, other methods such as public tenders or private sales may be more appropriate.

5.2.1 Auctions

A survey of 23 governments conducted in 2021 by United Nations Office on Drugs and Crime (UNODC) indicated that auctions are still considered the preferred method of sale, with many jurisdictions using or developing online auction platforms (e-auctions) (UNODC 2021). The most effective methods for selling assets depend on the type of asset being sold. Traditional methods such as auctioning assets following the forfeiture order in front of the courthouse or in a police station parking lot are no longer considered appropriate. Instead, social media platforms are preferred because they can reach a much larger audience, with a higher selling price as a result.

When conducting auctions, it is important to prevent defendants from buying back their assets. In many jurisdictions, it is illegal for defendants to buy their assets or for anyone else to buy an asset on their behalf. Potential bidders should be required to provide identification during registration, and they should be informed of the law prohibiting the purchase of assets on behalf of the defendant. In some jurisdictions where organized crime is prevalent, bidders may be hesitant to participate in auctions if they know that the defendants are members of powerful criminal groups. Without legislation and appropriate disposal policies, the defendants may be able to buy back their assets at prices well below market value. International sales or collaboration with asset management programs in other jurisdictions may be an option to prevent purchases by defendants.

Employees or immediate family members of the asset manager, asset management office, or law enforcement agency involved should not be allowed to bid on the assets. Clear policies should be put in place to prevent conflicts of interest.

Auctions typically begin with a preview of the assets, which allows interested parties to inspect the asset before the auction. This is done to generate interest in the assets. Potential bidders are registered either on the preview days or on the same day as the auction. Most of the registration process can be done online to increase the number of people who can participate.

The auction registration process should clearly state the auction procedures and any bond requirements. To ensure that bidders are creditworthy, especially for high-value assets, those who register are usually required to put up a deposit in the form of a bond. The bond is typically a percentage of the asking price, such as 10 percent of the valuation. For example, if the asset is valued at \$20 million, bidders must place a \$2 million bond to register and participate in the auction. This helps to ensure the participation of only serious bidders. After the auction, the winning bidder has two to five days to pay in full. If they fail to pay, the government will keep the deposit and the asset may be auctioned again or sold to the second-highest bidder.

5.2.2 Selection of Private Contractors

If a specialized contractor, such as a yacht broker, real estate agent, vintage car dealer, or high-value jeweler, is needed to conduct the sale, it is preferable to select one from a preselected panel of contractors for each asset class. Ideally, the asset management office will have a standing contract

with at least one specialist of each type. This is especially important when there is a need for an urgent or highly specialized sale, such as when dealing with live animals such as racehorses.

Contracts with specialized contractors can be fee based, percentage based, or a combination of both. In the United States, most contracts are mainly percentage based, where the contractor pays all the costs involved in the sale, such as promotion and preparation of the asset. After the sale, the contractor's fees and reimbursable costs are deducted from the sale proceeds, and the rest of the proceeds are allocated according to the forfeiture framework, court order, or asset management office policies.

While percentage-based contracts may be more expensive for the government, they have the benefit of contractors paying for costs and having an interest in getting the highest possible value. The actual rate depends on negotiations, but it should be similar to prevailing market rates. For example, in real estate, the common industry practice in the United States is in the range of 4 to 6 percent. Attempting to pay less could result in not contracting the best possible contractor. Some contractors may quote below what is reasonable to win the contract and then cut costs in the promotion of the sale or preparation of the asset, resulting in lower sale proceeds for the government.

Contracts should include provisions to allow the asset management office to terminate for fraud, nonperformance, negligence, or dereliction of duty, among other reasons. Contractors may try to abuse these contracts by subcontracting some of their responsibilities and then attempting to make the government pay for those goods or services.

Good public-private partnerships are important, and asset management offices should always be seeking dependable contractors for different asset classes and different stages of asset management. Recommendations from other asset management offices or through the Asset Recovery Inter-Agency Networks,¹ or asset management office networks² may be helpful. A reliable contractor who is an industry expert can help lead to significantly higher proceeds. For example, the US Marshals Service has worked with a specific yacht broker that consistently exceeds expectations. This broker was able to sell a yacht for \$10.1 million when it had been valued at \$7 million to \$8 million.³ The contractor expertly marketed the asset, hired the right brokers, and used high-quality promotional materials. This example illustrates the added value of strong public-private partnerships in asset management. Such a successful outcome would likely not have been possible for the asset management office to achieve by itself.

5.2.3 Preparation of Asset for Sale

Law enforcement officers typically have policies and protocols in place for dealing with contraband and assets that need to be salvaged, scrapped, or destroyed. However, these policies may not be adequate when the asset needs to be prepared for sale or social reuse purposes. Experienced asset management offices understand that investing additional funds in the disposal phase can yield better results in certain instances.

Before the sale or preview in an auction, it is important to prepare the asset for sale. The asset should be thoroughly searched and cleared of any personal property. In some cases, items such as weapons or narcotics have been found in vehicles or other movable property. The search needs to be exhaustive to identify any hidden compartments used to conceal contraband. Removing secret compartments could diminish the value of the vehicle and result in the vehicle being scrapped.

In addition to clearing the asset of personal property, it may be necessary to invest in some improvements to increase its value. For example, buffing and polishing a vehicle or trimming the lawn on a piece of real estate can result in generating more money and better recovery. Experienced contractors with industry knowledge can advise the asset management office on the appropriate investments in preparation to maximize sale proceeds.

5.2.4 Promotion of Auction or Sale

Promotion or marketing of the auction or sale of confiscated assets usually generates greater interest and likely higher sale proceeds. Some jurisdictions make funds available to ensure that assets are sold at maximum value. This may entail preparing the asset for sale through cosmetic improvements or incurring expenses for marketing and promotion. Canada established a special fund from which expenses incurred for the sale can be defrayed. In the United States, the Department of Justice Assets Forfeiture Fund and the Treasury Forfeiture Fund are the repositories of forfeited currency and forfeited property sale proceeds. They serve as the operating funds from which specified program expenditures, such as asset management and disposal expenses, are defrayed. In Belgium, Finshop (a division of the Patrimonial Services in the Ministry of Finance) undertakes appropriate publicity measures, such as advertising on the website for Patrimonial Services, mailing to interested parties, and advertisements in local, national, and specialized media.⁴

The promotion channel and the degree of publicity will depend on the asset class and the expected value of the specific asset. For example, the auction or sale may be promoted through a government website, other online sites, social media, television, radio, print, or another channel. There are many ways to generate interest, and qualified contractors with experience in the industry representing the government will be more likely to understand the best way to promote the specific asset class. If a contractor has been engaged, the contract should specify the responsibilities of the contractor and the possibilities and obligations regarding promotion.

It is important to exercise care when considering the promotion of the sale. If the asset manager does not promote the sale correctly, such as solely printing a notice in a newspaper with a limited distribution or planning a sale at the wrong time of year or in a less-suitable location, there will be lower proceeds from the sale than would otherwise have been available. This lost value will not be available to compensate victims or benefit society.

5.2.5 Unique Items

The proceeds of crime may be significant. It is not uncommon for corrupt officials or other criminals to spend vast amounts on luxury goods or unique assets, such as super yachts, castles, custom cars, collector items, or other memorabilia. After forfeiture, asset management offices may need to consider creative and tailored approaches when disposing of such assets. In addition, sales of unique items may take longer, resulting in additional time and expense of management of the asset prior to disposal and higher promotion expenses. For example, a yacht broker may prepare expensive high-quality brochures and distribute them to potential clients worldwide to promote a multimillion-dollar yacht. In the United States, a unique car was forfeited: the “Hulk car” (see figure 5.1), a Chevrolet Caprice customized to feature The Hulk (a fictional comic book hero from Marvel Comics). In this case, a special sale was held for this one vehicle, with significant promotion on television and online.⁵

It is likely that the asset management office will hire a contractor to sell unique items to realize higher sale proceeds. If the asset management office has engaged a contractor to handle all sales, the contract should establish a standard procedure for most assets and allow for special considerations when dealing with specialized or unique items that require different considerations, such as further promotion.

5.2.6 Public Tenders

In a public tender, interested parties would submit a bid that includes the price and other conditions, as in a silent auction. This method is useful for selling confiscated operating businesses, where the government may have an interest in other variables besides price, such as the preservation of jobs or ensuring continued operation in a community.

In some jurisdictions, tenders are used to sell a wide range of confiscated assets. While this method may seem secure, it can be challenging to provide a high level of transparency to the public and government. The tender process is also lengthy and can be difficult to manage.

5.2.7 Private Sales

Private sales (also known as private treaty arrangements) refer to a method of selling assets, typically real estate, where the sale is negotiated directly between the seller and the buyer, rather than through an auction or public sale. In a private treaty sale, the seller sets a price for the asset, and interested buyers negotiate with the seller until a mutually agreeable price is reached. This method is often used for the sale of high-value assets or in situations in which a public auction may not be practical or desirable. In some jurisdictions, such as the United States, private sales are generally prohibited owing to the lack of transparency and the goal to maximize sale proceeds by competition among many bidders.

Private sales may also be used in instances of official use or social reuse of an asset as the method to transfer ownership of the asset under

the forfeiture order from the government to a designated government agency or nonprofit organization.

5.3 Official Use

Confiscated assets can be given to a government agency for official use instead of being sold or disposed of, if allowed by the forfeiture legal framework or authorized by the court. For instance, law enforcement agencies may use confiscated sports cars for undercover work related to narcotics, while government agencies may use confiscated airplanes and vehicles for prisoner transport or other official purposes. In the Dominican Republic, forfeited real property has been converted into government offices, which can be more efficient than selling the asset and using the proceeds to buy a similar asset, thus saving public expenditures. The property types involved are typically vehicles, but sometimes there are jewelry, trailers, electronics, or other types of assets that must be used for operations, training, and any other function, including administrative or other support activities.

For confiscated assets to be allocated to official use, legislation and policies must permit this disposal method and have specific procedures in place to ensure transparency and efficiency in decision making. Assets should only be assigned to official use when there is a clear benefit, such as economic benefit to the government or law enforcement operational requirements that may justify the allocation of an asset to official use. However, it should be specified that no assets from victims' cases are to be used. Official use programs should have appropriate oversight, accountability, and transparency.

The use of confiscated assets by law enforcement agencies has been criticized heavily in some jurisdictions, including the United States, especially with respect to civil asset forfeiture.⁶ Critics assert that official use can create conflicts of interest for law enforcement agencies. When law enforcement agencies can use confiscated assets for their own purposes, they may be incentivized to prioritize asset forfeiture over other law enforcement activities. This can lead to abuses of the asset forfeiture process, such as targeting individuals or groups solely for the purpose of seizing their assets, and thus contribute to the over-policing of marginalized communities. Another criticism is that the allocation of confiscated assets to official use can lack transparency and accountability. Without clear guidelines and oversight, there is a risk that assets will be allocated based on personal or political preferences rather than on the best interests of the jurisdiction.

5.4 Social Reuse

Social reuse is the authorized transfer of confiscated assets to a government agency, or to its designee, such as a nongovernmental organization, for use to support social welfare. The forfeiture legal framework or court

authorization may allow this disposal method with procedures to ensure that social reuse decisions are efficient, transparent, and provide a clear benefit to the community. United Nations Convention against Corruption (UNCAC) and other international and regional agreements encourage jurisdictions to prioritize consideration of the use of recovered proceeds of crime to provide assistance to victims of crime.⁷

Social reuse is also particularly relevant in jurisdictions where corruption or organized crime have undermined confidence in public institutions, including where law enforcement is met with hostility or even active resistance. Using recovered proceeds of crime for the economic revitalization of affected communities can mitigate the damage done to society and restore confidence in the capacity of government to support communities. Social reuse is an important demonstration that when criminals take value from society, the rule of law takes value from criminals to return it to society.

Social reuse of confiscated assets can take many forms, such as the following:

- **Parks and recreational areas:** Confiscated land can be transformed into public parks and recreational areas, providing a space for outdoor activities, community gardens, and promoting community engagement.⁸
- **Community centers:** Confiscated property can be repurposed for community centers for health clinics, drug treatment programs, educational facilities, youth centers, or social activities.
- **Housing:** Confiscated properties can be converted into shelters or affordable housing for homeless individuals, low-income families, or victims of crime.⁹
- **Transportation:** Confiscated vehicles may be used for community transportation needs, ambulances, emergency services, or outreach vehicles to rural or isolated communities.

Social reuse may be the most appropriate disposal method for low-value property (for example, property located in a high-crime area) or where there is limited buyer interest (for instance, property that was previously owned by a notorious criminal).¹⁰ Assistance and resources from a non-governmental organization or a government agency may be necessary for continued success of the social reuse. For an example, see box 5.1.

While significant value can be derived from social reuse programs for government and law enforcement, if they are not well managed, the damage to trust in government can be irreparable. Successful social reuse programs require the following:

- A strategy for allocating property that goes beyond case-by-case interventions;
- Policies for determining when to allocate confiscated property, and at what cost to beneficiaries (free or reasonable rent or fee);

Box 5.1. Albania: Social Reuse of a Venue Confiscated from Organized Crime

In Albania, KeBuono! was set up as a social enterprise from an asset confiscated from organized crime, a venue that had been a nightclub in Fier, Albania. KeBuono! is a bakery that “promotes a culture of legality and nonviolence in the community, with particular focus on former prisoners and their families. It also offers vocational courses and activities for young people. About 75% of the staff are people who were endangered by or victims of crime, especially young people and women.

KeBuono! is part of the C.A.U.S.E. (Confiscated Assets Used for Social Experimentation) project, which is implemented by Partners Albania for Change and Development, Project Ahead, and Comitato Don Pepe Diana in collaboration with the Agency for the Administration of the Sequestered and Confiscated Assets and funded by the European Union. More than a bakery, it is part of a larger cause of judicial reform and the fight against organized crime. KeBuono! is a good example of social reuse, using a forfeited asset for social benefit and for solidifying the rule of law.

Source: CAUSE – Confiscated Assets Used for Social Experimentations, <https://euprojects.al/euprojects/cause-confiscated-assets-used-for-social-experimentations/>.

- A transparent process that is sanctioned by policies and procedures and includes internal controls to select the benefiting individuals or organizations. Civil society organizations can be involved in identifying possible beneficiaries and evaluating their social or institutional credentials;
- Simple and clear procedures for applying for benefits;
- Strategies for managing seized businesses to ensure their reentry into the legitimate economy;
- Capacity to provide technical assistance to citizens in charge of the seized assets;
- Ongoing financial resources to support reuse projects;
- Internal controls and external audits to ensure that the assets are being used correctly; and
- A database with information on the allocated assets, with public reporting on the program.

5.5 Salvage, Scrap, or Destruction

In some instances, forfeited assets may not have other viable disposal options than salvage, scrap, or destruction. Examples of such assets include the following:

- Low value assets;

- Seized or restrained assets that were not properly maintained or stored and no longer have value;
- Assets that have depreciated due to being held longer than anticipated until forfeiture;
- Significant depreciation caused by circumstances outside the control of the asset management office (for example, market fluctuations in value, damage due to natural disasters, contamination, or fire);
- Goods not meeting consumer protection, environmental, or health and safety standards (for example, vehicles not meeting emission standards);
- Counterfeit, illegal, or dangerous goods;
- Conveyances (for example, vehicles, aircraft, or marine vessels) modified for illegal purposes such as concealing weapons or smuggling narcotics; and
- Goods seized in the public interest for a compelling law enforcement reason, such as disrupting criminal activity or obtaining evidence.

The forfeiture framework and the policies and procedures of the asset management office should allow for the possibility of salvaging, scrapping, or destroying seized, restrained, or forfeited assets in certain circumstances. If this is not the case, court authorization may be required. Once approved, the asset management office will contract private sector specialists in accordance with applicable procurement policies. It is a good practice for the asset management office to have a roster of standing contracts with private sector parties who can scrap, salvage, or destroy various types of assets.

The need for salvage, scrap, or destruction as a method of disposal is often due to poor pre-seizure planning, such as incorrect estimation of the asset's value, failure to anticipate the length of time until forfeiture, or poor management, such as inadequate storage conditions. Sometimes, an overconfident asset management office recommends the seizure of assets that the office lacks the resources or expertise to manage properly. In other cases, an overzealous prosecutor or court orders the seizure of "any and all assets," forcing asset management offices to seize assets they would not normally seize. Good pre-seizure planning and proper asset management practices can help minimize the need for disposal through salvage, scrap, or destruction.

5.5.1 Salvage or Scrap

Selling a forfeited asset for scrap or salvage may be appropriate if the asset has no value or limited value, respectively. This approach is appropriate for assets such as vehicles, marine vessels, or aircraft, where there is a market for parts or scrap metal but the current value of the asset is too low or the costs of sale, such as through auction, are too high to make the

sale worthwhile. Therefore, the best option is to recover as much money as possible by selling the asset for salvage or scrap.

Scrap refers to items that have no value or use but are sold for their raw materials. For example, a seized Ferrari sports car that has been left exposed for 12 years in an open-air impoundment lot without maintenance may be sold for scrap metal, as the car itself may no longer be functional or repairable. *Salvage*, on the other hand, refers to items that still have some value or use, despite being damaged or unusable in their current state. For example, a vehicle not meeting emission standards can be sold at salvage to someone who will fix the vehicle to meet roadworthy standards, or for parts. In other cases, vehicles have been modified with hidden compartments to conceal contraband. The removal of the secret compartments could diminish the value of the vehicle and result in the vehicle being sold for scrap or salvage.

5.5.2 Destruction

Destruction may be considered for problematic assets or assets that are not economically viable. Problematic assets are those where the government has a compelling reason not to be involved in their sale. For instance, weapons and narcotics are often seized and subject to forfeiture, but the government chooses to destroy them instead of selling them, despite their value. In the United States, a large collection of confiscated Nazi memorabilia was destroyed with the court's permission rather than the government's involvement in a sale.¹¹ In other cases, destruction of confiscated animals, counterfeit goods, marijuana from legal medical dispensaries, and costumes of sexualized nature has been deemed preferable to sale by the government. For these cases, it is important that legislation or internal policies allow the destruction of assets, and for the court to confirm the destruction with a formal order.

The other broad category is assets that are not economically viable. Eventually, all jurisdictions seize assets that are not viable for sale by the time a forfeiture decision is obtained. For example, common vehicles have little value after eight or nine years. Other assets, such as personal property (for example, furniture) may have been seized under an "any and all assets" seizure or forfeiture order. The forfeiture of these low-value assets could have been avoided by application of a minimum-value threshold as part of pre-seizure planning (see chapter 3, section 3.3, "Asset Type"). An asset management office may need to deal with the disposal of assets seized for evidence purposes (for example, an old car that had been used to transport narcotics).

Accordingly, it is recommended that all jurisdictions have, either in legislation or in their policies and procedures, the option to destroy problematic or nonviable assets. Depending on legislation, the asset management office would request the court to approve the destruction of certain assets or inform it of the destruction. Proper pre-seizure planning and asset management can reduce the need for disposal by destruction. Periodically, an asset management office may review the cases that led to destruction of assets to identify areas for improvement of the forfeiture framework, as well as the office's policies and procedures.

5.6 Allocation of Proceeds

The primary purpose of asset recovery is to remove the proceeds and instruments of crime from the control of criminals. However, other objectives have been gaining prominence in many jurisdictions. One such objective is using the recovered proceeds of crime to compensate individual victims and to support organizations and programs that cater to the needs of victims of crime. Another objective is the social reuse of the proceeds and instruments of criminal activity. This solution benefits communities that have suffered the negative effects of a crime and helps restore confidence in the rule of law.

The global community has increasingly amplified this commitment to apply recovered proceeds to uplift the most vulnerable and to offset the devastating impact of corruption on communities. For example, in 2015 all UN member states adopted the 2030 Agenda for Sustainable Development. This document recognized corruption as a major hindrance to development and encouraged governments to strengthen the recovery and return of stolen assets to foster sustainable development through the achievement of the Sustainable Development Goals.¹²

5.6.1 General Treasury Fund

In many jurisdictions, the default option for disposing of seized assets is to liquidate them quickly and transfer the proceeds to the general treasury fund (or national revenue fund) for allocation to government spending priorities.¹³ This method is simple and requires no additional administrative capacity, with decision-making left to democratically elected officials and ordinary government accountability mechanisms in place to monitor general expenditure.

Critics of this approach argue that recovered proceeds should be used more directly as restitution to communities affected by crime, which can increase support for law enforcement and the rule of law. In states with low levels of trust in public institutions, setting up a dedicated asset recovery fund that transparently and accountably distributes funds to worthy community support projects can help restore trust in government. Civil society and community activists can participate in competing for funding allocation and playing a role in implementing or actively monitoring execution of projects, building capacity in these sectors.

5.6.2 Special Purpose or Forfeiture Funds

Many jurisdictions have set up special, dedicated, or ring-fenced funds to deposit the proceeds of crime. These confiscation funds typically require adequate infrastructure and capacity to manage and document transfers in and out of the government's account. For example, the United States operates one of the largest special asset forfeiture funds in the world. In fiscal year 2021, the US Marshals Service distributed US\$1.8 billion to victims of crime and claimants and shared US\$135 million with participating state and local law enforcement agencies (US Marshals Service n.d.).

In some jurisdictions, proceeds may also be used to meet the objectives of the government's asset recovery program, including by funding capacity training to manage seized and confiscated property. With the proper legislative framework and adequate safeguards in place, confiscated funds can be used effectively to enhance law enforcement efforts and even achieve self-financing status, by covering the costs incurred in maintaining and improving the value of seized and confiscated property. For example, in France the agency responsible for asset recovery and management, Agence de Gestion et de Recouvrement des Avoirs Saisis et Confisqués (AGRASC), is fully self-funded by retaining up to €1.8 million from the proceeds of confiscated assets, earning interest on the funds deposited into its account, and collecting a domain tax from the sale of confiscated assets. Similarly, in Canada the Seized Property Management Directorate recovers all its operational costs from the proceeds of the sale of forfeited property.

If a government intends for an asset management function to be self-financing, the government must ensure that the asset recovery value chain is given sufficient resources. In addition, to prevent conflicts of interest, governments should impose adequate policies and controls on the allocation of confiscated funds to law enforcement, including by avoiding any performance rewards directly linked to assets seized. For an example of an asset recovery incentive program, see box 5.2.

In jurisdictions with a federal system, an equitable sharing of proceeds can be used to foster better coordination and cooperation between national and subnational law enforcement agencies.¹⁴ In the United States, the federal government established the Equitable Sharing Program, an initiative that allows state and local law enforcement agencies to share in the proceeds of forfeited assets that were seized during joint investigations with federal agencies. For example, if a local police department works with a federal agency to investigate a drug trafficking organization and seizes assets such as cash, vehicles, or property that are believed to be connected to the illegal activity, those assets can be forfeited and sold. The proceeds from the sale are then divided between the federal agency and the local police department, with the local department receiving a percentage of the proceeds. The Equitable Sharing Program is subject to extensive regulation and strict auditing controls. It is used for limited law enforcement purposes and only in cases in which there are no known victims. The program has been criticized for incentivizing law enforcement agencies to prioritize asset forfeiture over other law enforcement activities, and for potentially leading to abuses of the asset forfeiture process. However, supporters of the program argue that it is an important tool for law enforcement agencies to disrupt criminal organizations and remove the profits from illegal activity.

In other cases, law enforcement operational requirements may justify the allocation of an asset to official use. For instance, sports cars may be assigned to agencies conducting undercover work related to narcotics, or a confiscated airplane and vehicles may be assigned to a government agency for prisoner transport. In some cases, it may be more efficient to assign these assets to agencies rather than selling them and using the proceeds to buy new ones. These assets can be used for operations, training, and

Box 5.2. United Kingdom: Asset Recovery Incentivisation Scheme

The United Kingdom initiated the Asset Recovery Incentivization Scheme (ARIS) in 2006 to incentivize operational partners to pursue asset recovery as a contribution to the overall aims of cutting crime and delivering justice. It divides net receipts from asset recovery between the Home Office and operational partners. The allocation of funds between operational partners is based on their relative contribution to delivering receipts into ARIS. For cash seizures, where a single agency can seize, detain, and apply for forfeiture of the cash, that agency retains the 50 percent operational share in its entirety. In the case of confiscation receipts, 18.75 percent is allocated to each of the investigating and prosecuting agencies, with the remaining 12.5 percent allocated to HM Courts and Tribunals Service as the enforcement authority. This split of the allocation is broadly equivalent to the relative levels of expenditure identified by the National Audit Office. In civil recovery cases, funds are shared between the referring agency and the enforcement authority. No ARIS receipts are returned to the Treasury.

The Public Accounts Committee report on confiscation orders raised concerns about the functioning of ARIS and, in response, the government committed to review ARIS.

Supporting national capabilities in this way should create a virtuous circle, with improved performance leading to the recovery of additional assets, leading to additional ARIS receipts for all scheme members and funds to invest in these capabilities in future years, resulting in a significant impact on serious and organized crime.

The Review Committee recommended using a portion of ARIS income to fund specified criminal justice projects to provide a clear link between use of the fund and return on investment. Enhanced accountability via quarterly reporting will enable ARIS to be used as a genuine driver of asset recovery performance. In tandem, to increase overall transparency, a report on all agencies' use of ARIS funds will be provided by the Home Office annually.

Bidders will be required to set out the impact of the planned activity, defined performance metrics, and the benefits and savings expected. Each bid will have to show how the planned activity will increase the value of assets removed from the criminal economy, enhance national capabilities to tackle criminal finances, and deliver efficiencies in the asset recovery process. Ministers will decide which bids to fund.

Source: Home Office (2015).

administrative or other support activities, and can ultimately benefit the mission of the agency while saving taxpayer money. Typically, vehicles are the property types involved, but occasionally other types of assets may be used for the good of the agency's mission (for example, jewelry, trailers, or electronics).

5.6.3 Victim Compensation

In the context of asset recovery, victims of crime can be individuals, legal entities, communities, or even states. Accordingly, criminal proceeds can

be used to support victims in a variety of ways.¹⁵ Examples include the following:

- **Funding social programs:** Confiscated assets can be used to fund social programs that benefit the community, such as drug treatment programs, education programs, or community development projects.
- **Compensating individual victims:** Confiscated assets can be used to compensate victims of crime, including by providing financial assistance, housing, transportation, or other forms of support.
- **Preventing crime:** Confiscated assets can be used to prevent crime by funding programs that address the root causes of criminal behavior, such as poverty, addiction, or mental health issues.

It is increasingly common for jurisdictions to use confiscated assets to provide restitution to the victims of crime. Legislation and regulations have been designed to give priority to victims over the general treasury or the confiscation fund of the state or government. If sufficient assets exist to satisfy a confiscation judgment and restitution order, the confiscated assets could be deposited for the benefit of the state or government after the victims receive restitution.

Such mechanisms ensure that confiscation orders are not enforced at the expense of victims who are owed restitution because of the underlying criminal conduct. Another advantage lies in the general restraint provisions for confiscation, which permit a more aggressive provisional restraint, once formal charges are filed, than is often available in a civil litigation action to obtain restitution or secure compensation. Finally, using confiscation to obtain restitution for victims will often save them the significant fees or expenses (representing a percentage of the assets that could be recovered) that are usually required for recovery through a private law (civil) case.

As detailed later in this chapter, this practice is supported by the global community and reflected in several international conventions, including UNCAC and other instruments. In many civil law jurisdictions, states and other relevant governments can claim their rights before confiscation as a civil party in criminal proceedings. Even if they lack the status of a civil party, they can appeal to the prosecutors, the investigative judges, or the court for restitution of their property. Similarly, in common law jurisdictions, statutes and legislation often allow victims to ask for restitution of stolen or embezzled property in which they had previous title or ownership when the court adjudicates the confiscation. See box. 5.3.

International and Multilateral Regimes

Victim compensation is encouraged as a policy objective under several international instruments. For instance, UNCAC provides for the return of recovered proceeds to prior legitimate owners and for compensating victims, as a priority over payment to the state.¹⁶ Article 53 obliges a state party to “take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize

Box 5.3. Romania: Fifty Percent of the Value of Confiscation Orders to Be Used for Crime Prevention, Education, and Victim Protection

Apart from the social and public reuse of movable and immovable assets, the Romanian strategy for asset recovery and the law adopted in 2022 underlines even more the connection between confiscated assets and their use for important social benefits. Law no. 230/2022 introduced the National Crime Prevention Support Mechanism, an institutional and financial instrument that prioritizes the allocation of resources, including for the protection of victims of crime. It will be supported by the amounts confiscated, as well as the amounts resulting from the capitalization of assets confiscated from criminal judicial proceedings.

The mechanism is operational as of 2023. The money obtained through the mechanism is allocated as follows:

- 20 percent for the Ministry of Education and Research,
- 20 percent for the Ministry of Health,
- 15 percent for the Ministry of Internal Affairs,
- 15 percent for the Public Ministry,
- 15 percent for the Ministry of Justice, and
- 15 percent for the Agency for nonreimbursable financing of projects proposed by associations and foundations working in the field of victim protection and social assistance.

The 15 percent allocated to Agen ia Na ională de Administrare a Bunurilor Indisponibilizate, the last category for undisposed assets, is going to be offered as small grants based on competitive procedures to nongovernmental organizations for implementing crime prevention, legal education, and victim protection projects.

Law no. 230/2022 addresses access to compensation for victims of crime as follows:

- A new subsection called "Access to compensation for victims of crime" aims at helping victims of crime receive fair and proper compensation for the injury suffered. By supplementing the budget of the Ministry of Justice with 15 percent from the amounts made available through the National Crime Prevention Support Mechanism, the budget of the Ministry will ensure, in addition to the financing of crime prevention projects or programs, the necessary funds for allocating financial compensation or an advanced payment to victims of crime in accordance with the provisions of Law no. 211/2004.
- Under the new provisions, victims may claim financial compensation for both moral and material damages caused by the crime, with no limit on the amount of compensation. The modification was necessary to include moral damages among the categories of damages for which financial compensation is given.
- In addition, an amount in the form of a voucher, up to a maximum of five national

(continues)

minimum gross basic salaries (lei 15.000, approximately €3,050), may be given as an advance from the financial compensation, to help victims cover urgent expenses such as food, accommodation, transport, medicines, and medical supplies. The vouchers will be handed out by public and private entities. The methodology for issuing, distributing, and paying out the vouchers, their value, and the criteria for selecting public and private entities was recently approved by government decision.

another state party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention." Article 57 requires a requested jurisdiction to "give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime." Under article 56, legal systems should also provide for the right of potential claimants to be informed of proceedings when recoverable assets are identified or seized (UNODC 2004a).

Among state parties to UNCAC, where victims obtain a compensation judgment against an offender, payments are most commonly derived from recovered assets.¹⁷ However, some states also have compensation schemes that are funded by the government. In certain cases, these schemes take necessary measures to collect the amounts owed by the offenders and directly transfer them to the victims. In other cases, the funds guarantee compensation even if the perpetrators fail to meet their responsibilities, by drawing funds from other sources (such as seized money that has not been claimed within one year from the date of the final judgment, the value of confiscated assets, compensation amounts from previous cases that were not claimed within the legal term, and surcharges imposed in cases of delayed payments). Some states have also implemented provisional measures to ensure that compensation remains available to the victims after the final judgment.

Similarly, article 25 of the United Nations Convention against Transnational Organized Crime (UNTOC) provides that state parties must take steps to provide assistance and protection to victims, including by establishing appropriate procedures to provide access to compensation and restitution. Victims are also entitled to an opportunity to be heard at appropriate stages of criminal proceedings against offenders.¹⁸

On a regional level, the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) requires states to give "priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims of the crime or return such property to their legitimate owners." This obligation extends to "the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes

proceeds or other property in the meaning of Article 5 of the Convention.” States are also encouraged to “give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such property, in accordance with its domestic law or administrative procedures.” It is unclear, however, whether these provisions are effectively implemented in practice.¹⁹

As another regional example, European Union Directive 2012/42/EU requires states to ensure that confiscation measures do not prevent victims from seeking compensation where they “have claims against the person who is subject to a confiscation measure.” Although, in practice, confiscation mechanisms differ greatly from jurisdiction to jurisdiction, priority is typically given to victims over the general treasury or any special confiscation fund. In addition, if sufficient assets exist to satisfy a confiscation judgment and a restitution order, the confiscated assets are generally used to benefit the government only after the victims receive restitution.²⁰

Civil Law Regimes

As examples of civil law regimes, Belgium and France have victim-compensation regimes typical of European Union member states. In Belgium, articles 63–70 of the Code of Criminal Procedure provide for compensation to victims (including foreign nationals and states) through the civil party procedure in the context of a criminal trial. Under these rules, the victim’s claim must be made prior to conclusion of the confiscation hearing. The resulting court decision is executed by the Ministry of Finance.

In France, victims (including foreign states) can participate as a civil party and claim compensation at any stage of a criminal proceeding. The court may determine the amount of compensation due and order the perpetrator of the offense to pay litigation costs not borne by the state. Even in the absence of a court decision on civil liability, victims must be prioritized over the state in the allocation of proceeds. AGRASC plays an important role in this process by determining the order of priority for compensation (including fiscal, customs, and social authorities) and enforcing the payment of the claim. This administrative process is often easier and more cost effective for victims than recovering losses through a civil proceeding.

In Uzbekistan, the use of an electronic database facilitates the enforcement of victim compensation orders (see box 5.4). Such systems provide essential transparency and accountability for victim compensation programs.

Common Law Regimes

In common law jurisdictions such as the United Kingdom and South Africa, the court makes a compensatory order in favor of a victim. This order may be sought and obtained and, in some jurisdictions, enforced by the same agency responsible for the prosecution of the offender.

In Australia, interested parties may apply to a court for an exclusion order in respect of a restraining or forfeiture order. This application must be substantiated and shared in writing with the authority responsible for the

Box 5.4. Uzbekistan: Monitoring Enforcement of Victim-Compensation Orders

The Bureau of Compulsory Enforcement, located in the General Prosecutor's Office, is the only entity tasked with enforcement of court-made confiscation orders. It has considerable experience executing victim compensation orders following a criminal conviction. The Enforcement Bureau launched a unified electronic database where all enforcement documents are stored. The Bureau receives all information about confiscation orders from the criminal courts. The data is received electronically, and the Bureau reports back to the court electronically. Each enforcement document is assigned a single identification number (code) that ensures data security.

Progress in each enforcement action by state executors of the Bureau is captured in real time. The claimant and the debtor, using the single identification number, can monitor the progress of enforcement actions at all stages via the internet. All document flow between the Bureau and the criminal courts is digitized. This greatly improves transparency and accountability. The system is stored on the servers of the Data Processing Center of the General Prosecutor's Office.

relevant order. The authority must be given an opportunity to conduct an examination related to the application. If the authority chooses to contest the application, it must provide its reasoning to the applicant and the application will be adjudicated by a court.

In the United Kingdom and South Africa, where a victim has started, or intends to start, civil proceedings to recover a loss, injury, or damage sustained due to criminal conduct, the court considering a confiscation order has discretion to issue, deny, or delay a realization order. In the United Kingdom, where there is a compensation order, liquidators, receivers, and victims must be paid from recovered funds prior to final transfer to the Treasury under a confiscation order.²¹

In the United States, the value of property recovered and paid to victims of crime and claimants can be significant. For example, in fiscal year 2022, the US Marshals Service distributed US\$505 million to victims of crime and shared US\$228 million with participating state and local law enforcement agencies.²² The Attorney General is responsible for distributing forfeited property among victims from the Department of Justice Assets Forfeiture Fund. This authority has been delegated to the chief of the Asset Forfeiture Money Laundering Section, who also has the power to take any other action to protect the rights of innocent persons in the interest of justice. In parallel, the Secretary of the Treasury determines claims against assets deposited into the Treasury Forfeiture Fund. When distributing the proceeds of forfeited assets, priority is given to valid owners, lienholders, federal financial regulatory agencies, and victims (in that order). After losses to these parties have been satisfied, any remaining proceeds can be shared with state and local law enforcement agencies. In addition, victims may be granted remission of the forfeiture of property if they can demonstrate that

- A pecuniary loss of a specific amount has been directly caused by the offense that was the underlying basis for the confiscation order and the loss is supported by documentary evidence, including invoices and receipts;
- The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts that were committed in the course of the criminal offense;
- The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner toward the commission of the offense;
- The victim has not been compensated for the wrongful loss of the property by the perpetrator or others; and
- The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of property.

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Notes

- 1 See for example, the Camden Asset Recovery Inter-agency Network (CARIN), <https://www.carin.network/>, or the other Asset Recovery Inter-Agency Networks (ARINs), <https://star.worldbank.org/publications/international-partnerships-asset-recovery>.
- 2 For example, the Balkan Asset Management Interagency Network (BAMIN), <https://www.bamin-network.org/>.
- 3 Tom McGhie, “46m Motor Yacht Queen Anne Sold at Auction,” *Boat International*, March 31, 2022, <https://www.boatinternational.com/yacht-market-intelligence/brokerage-sales-news/queen-anne-superyacht-sold>.
- 4 Finshop does not have a specified budget for publicity purposes but may use the “buyer” premium that is paid for each asset sold by their services (up to 20 percent of “costs” that are added to the sale price) for these expenses.
- 5 “Incredible Hulk: Crazy Green Druggie Car Hits Auction Block,” *TMZ*, November 8, 2012, <https://www.t TMZ.com/2012/11/08/incredible-hulk-car-drug-bust-arrest-thomas-king-ohio/>.
- 6 For an example, see Institute for Justice (2020).
- 7 See UNODC (2004a). UNCAC, art. 57, para. 3(c) states, “[Requested State Parties shall] give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.” See also GFAR (2017) Principle 5: “Where possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct.”
- 8 In Jamaica, the National Land Agency has taken over this kind of real estate and then is responsible to turn that property into a positive outcome.
- 9 For example, in Honduras, buildings have been loaned to be used for the temporary accommodation of displaced families, families affected by natural disaster, and families who need to hide because they have been targeted by organized crime groups. In the United States, confiscated real property has been allocated to nonprofit organizations, such as Habitat for Humanity, for refurbishment to provide housing for families.
- 10 For example, in Italy, property recovered from the Mafia has been used in social reuse initiatives such as houses allocated for use to families who lost their homes following a flood, manors assigned to a municipality to host women in distress, and housing allocated to refugees and homeless people. For another example, see Tyrone Reid, “Buyers Shun Confiscated Criminal Properties,” the (Jamaica) *Gleaner*, July 31, 2022, <https://jamaica-gleaner.com/article/lead-stories/20220731/buyers-shun-confiscated-criminal-properties>.
- 11 Polly Mosendz, “The Whitey Bulger Auction: What’s a Mobster’s Stuff Worth?,” *Bloomberg*, June 24, 2016, <https://www.bloomberg.com/news/articles/2016-06-24/the-whitey-bulger-auction-what-s-a-mobster-s-stuff-worth#xj4y7vzkg>.
- 12 For more on the Sustainable Development Goals and asset recovery, see UNODC (2022).
- 13 A 2014 report from the Center for the Study of Democracy, *Disposal of Confiscated Assets in the EU Member States Laws and Practices*, found that “[t]he objective behind asset confiscation extends beyond depriving criminal enterprises of their ill-gotten gains. Being increasingly aware of the full array of considerations behind asset confiscation, EU MSs have turned their attention to the compensation of victims—individual victims and deprived communities alike—and to the maintenance of public confidence in the justice system.” Note, for example, the Irish Proceeds of Crime Act (POCA), sec. 4(5), which states, “The Minister may sell or otherwise dispose of any property transferred to him or her under this section, and any proceeds of such a disposition and any moneys transferred to him or her under this section shall be paid into or disposed of for the benefit of the Exchequer by the Minister.” <https://www.irishstatutebook.ie/eli/1996/act/30/section/4/enacted/en/>

[html#sec4](#)

- 14 In Canada, the Forfeited Property Sharing Regulations specify a formula to determine the share of net proceeds with provincial and foreign governments involved in asset recovery investigations, after deducting operational and overhead expenses. In Honduras, money and other financial assets are distributed by the Oficina Administradora de Bienes Incautados (OABI) to (a) units, institutions, programs, and projects of the security and justice sector (45 percent); (b) units, institutions, programs, and projects of the preventive sector (45 percent); and (c) the OABI. In Colombia, after deducting the expenses of the asset management office, 25 percent of the assets go to the judiciary, 25 percent to the attorney general's office, 10 percent to the judicial police (part of the national police), and 40 percent to the national budget (with the exception for rural properties).
- 15 Colombia has been uniquely affected by drug trafficking and related organized crime and has similarly made the compensation to society for economic, material, psychological, and environmental damage derived from illicit activities a core policy priority: art. 22 of Law No. 1849 (2017) allows for seized rural properties to be sold preconfiscation and the proceeds to be directed to a government program that helps rural households access land. Romania allocates 20 percent of the value of confiscated assets to education and scientific research and 15 percent to associations, foundations, and academies that are active in the social area. In the United Kingdom, a percentage of recovered assets can be used for either reinvestment in asset recovery projects or for community projects. In Honduras, buildings have been loaned to be used for the temporary accommodation of displaced families, families affected by natural disaster, and families who need to hide because they have been targeted by organized crime groups.
- 16 See UNODC (2004a). UNCAC art. 35 on compensation for damage says, "Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage to obtain compensation."

Article 53 allows a state party to participate as a private litigant in the courts of another state to recover corruption proceeds as a plaintiff in its own action, as a claimant in a forfeiture proceeding, or as a victim for purposes of court-ordered restitution.

Article 57, para. 3(c) foresees "in all other cases" (except for embezzlement, establishment of prior ownership, and recognition of damages) to "give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime."
- 17 A report tabled before the Open-ended Intergovernmental Working Group on Asset Recovery in August 2016 provides an account of good practices that exist in various states and refers to several cases in which compensation was sought by and for victims of corruption. The note draws primarily on the information collected during the first cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption and the findings of various relevant tools and publications, those developed by UNODC and the joint UNODC-World Bank Stolen Asset Recovery Initiative (STAR). See UNODC (2016).
- 18 See UNODC (2004b). Article 25 of the UNTOC on assistance to and protection of victims says, "1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation. 2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention. 3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence." See also art. 14, para. 2.
- 19 *Thematic Monitoring Review of the Conference of the Parties to CETS No. 198*, art.

- 25, sec. 2–3 (Confiscated Property) assessed the extent to which Conference of the Parties states take into account asset sharing, particularly for the purposes of victim compensation and return of property to the legitimate owner, as well as the possibility to negotiate relevant agreements. The review found that the relevant provisions of the Convention have generally been transposed into domestic law in a vast majority of the states. However, most jurisdictions were often not in a position to demonstrate the effective implementation of the provision in practice through statistics or case studies. Only 12 state parties (Albania, Cyprus, France, Hungary, Italy, Latvia, Monaco, Moldova, San Marino, Slovenia, Sweden, and Türkiye—that is, 35 percent of all state parties) provided a case example to demonstrate the effective implementation of the provision. In addition, the review found that the conclusion of agreements or arrangements specifically devoted to asset sharing mostly occurs on a case-by-case or ad-hoc basis. Only six states (Austria, Monaco, Portugal, the Russian Federation, Slovenia, and Spain—that is, 14 percent of all state parties) reported about ongoing negotiations expected to result in formal agreements with jurisdictions which are not state parties to the Convention (for example, Switzerland and the United States). See Council of Europe (2018).
- 20 A 2014 European Union study analyzed the laws and practices for the management and disposal of confiscated assets in the European Union and found that all member states have mechanisms to ensure that victims of a crime can be compensated. See Center for the Study of Democracy (2014).
- 21 See the following sections of the *Proceeds of Crime Act 2002* (UK): sec. 13 (regarding England and Wales), sec. 97 (regarding Scotland), and sec. 163 (regarding Northern Ireland).
- 22 See US Marshalls Service (n.d.), “Fact Sheet: Asset Forfeiture 2023.” <https://www.usmarshalls.gov/sites/default/files/media/document/2023-Asset-Forfeiture.pdf>.

6 Seizure and Confiscation of Real Property, Personal Property, and Complex Assets

6.1 Introductory Remarks

This chapter discusses the factors to be considered when an asset recovery office seizes and manages different types of assets. Assets are commonly categorized into three groups for the purpose of asset management:

- **Real property**, such as land and any permanent structures or improvements attached to land (for example, a house, farm, commercial building, or vacant lot), as well as the rights and interests associated with the land (for example, mineral rights, water rights, and easements)
- **Tangible personal property**, which generally is a movable asset such as cash, artwork, antiques, jewelry, stamps, vehicles, marine vessels, and aircraft
- **Complex assets** such as intangible personal property (including financial instruments [for example, stocks, bonds, liens, or crypto assets], licenses [for example, professional, liquor, taxi, and business], and intellectual property [for example, patents, copyrights, and website domain names]), as well as operating businesses.

Proper asset management in each of those categories can mitigate the risk of potentially significant losses throughout the process of seizure, confiscation, and recovery. As detailed later in this chapter, it is important for law enforcement agencies and asset management offices to collaborate in identifying an asset for seizure, establishing its value, and ensuring that it is effectively managed.

This chapter provides insight into the evaluation process associated with each asset class and highlights the importance of coordination at the

initial stages when decisions are being made about whether to take an asset, and when third-party assistance should be considered. A sample notification form that could be sent by law enforcement or the prosecutor's office to formalize the advice process is provided in appendix B.

6.2 Real Property

Real property is land or buildings owned by someone, either a natural or a legal person. For asset management purposes, it can be further divided into residential property, commercial property, and vacant lots.

Real property is often viewed as an appreciating asset. Nevertheless, the potential exists for significant losses if the property is not adequately evaluated through a comprehensive process or if it is not effectively managed after seizure (OECD 2018). In addition, assets in this class can typically only be confiscated and disposed of pursuant to a final court decision or with the consent of the lawful owner(s).

On any asset seizure, it is important that the law enforcement agency and the asset management office engage early to ensure an informed decision and to mitigate the downside risk or losses that might exceed the realizable value of the property. When a decision is made to seize an asset, the asset management office should follow the initial principles of good property management, including by documenting the asset (as well as any fixtures and fittings) in a register, photographing the asset at the time of taking possession, and completing a property inspection report (see appendix C). The asset management office should also ensure that the real estate has been searched thoroughly before taking it into custody and control. It is important to recognize that although the real estate may have been searched by law enforcement before it was handed over to the asset management office, that action cannot be guaranteed, nor is the objective of the search necessarily known. Similarly, if the asset management office is dealing with the initial seizure process, it is highly likely that no search has been conducted.

Ideally, the asset management office should sign a memorandum of understanding (MOU) with the prosecuting body and law enforcement agency that have identified the property, defining specific requirements around this search. In particular, the MOU should ensure that relevant authorities search and "clear" assets before handing them over to the asset management office, both for the safety of the personnel handling an asset and as good practice in evidence preservation.

For example, an MOU may include wording like the following: *In the case where law enforcement has not had the opportunity to complete the property searches and remove personal items and evidence, then it is good practice to ensure that the searches are carried out before the assets are placed in the custody of the asset management office. It is therefore essential that asset management office staff are suitably trained to be able to assist law enforcement with this requirement.*

All items should be removed, itemized, and returned to the defendants if there are no issues relating to criminality by the referring law enforcement

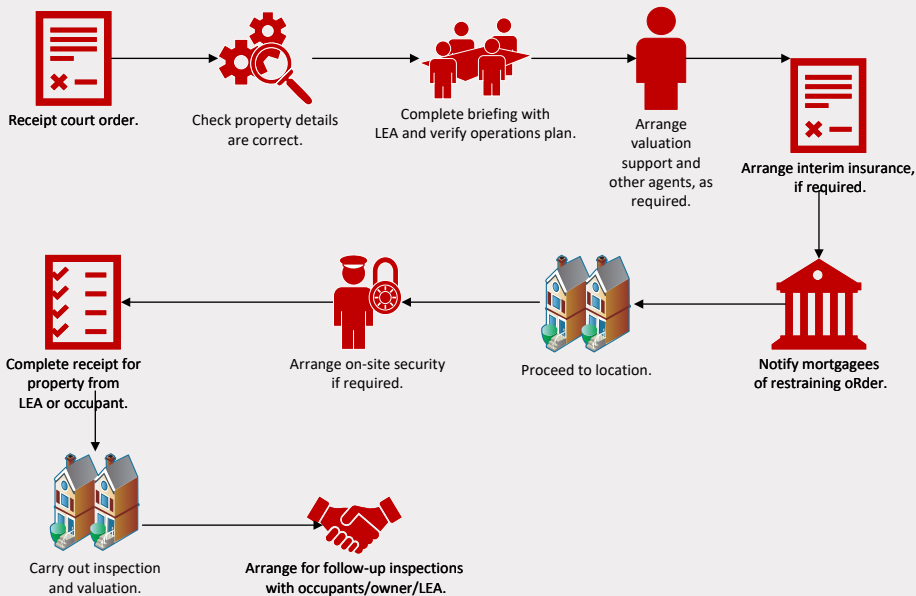
agency or if the property is not covered by the court seizure order. If there is some sign that an offense may have been committed (such as weapons, firearms, or drug paraphernalia), then law enforcement should be asked to remove the items, and/or appropriate exhibit handling techniques should be used to record the items.

Safe clearance of assets after seizure is an issue of safety to asset management office staff and to the public and the final owner of assets after disposal by the asset management office. All property should be searched, and ongoing management steps should be taken to ensure that staff, contractors, and the public are free of risk from hidden hazards. (See figure 6.1.)

6.2.1 Valuing the Property

When real property is the contemplated subject of seizure and forfeiture, it is particularly important for the prosecutor or law enforcement agency to investigate ownership interests in the property and possible problems with its custody, marketability, and eventual disposition. To this end, a thorough title search should be completed before seizure, as well as a careful examination and estimation of the extent of the wrongdoer’s equity in the property using such informational sources as recorded mortgages and liens, and state and local tax records.

Figure 6.1. Initial Seizure and Inspection of Real Estate



Source: Guy Sayers. Note: LEA = law enforcement agency.

With international seizures, there may be other important considerations to be addressed through international coordination during pre-seizure planning. For example, in some jurisdictions, the ownership of property by other sovereign governments is not permitted. Accordingly, the asset may need to be restrained until a final forfeiture order, with the enforcement of such order and sale. In international seizures, mutual legal assistance treaties (MLAT) will be an important tool for coordinating pre-seizure planning and post-seizure enforcement. Using an MLAT, a foreign government who suspects that a person or entity has committed a crime and holds assets in another jurisdiction can request assistance from the other jurisdiction to freeze or seize those assets. MLATs will help to ensure that the restraint and forfeiture of the assets are carried out in a manner that respects the rights of all parties involved and complies with the laws and procedures of both jurisdictions.

When a prosecutor or an agency is deciding whether to seize property, the first consideration is to determine the property's value and the defendant's net equity in the property. The defendant's net equity will be affected if there are mortgages or liens against the property or there is a legitimate third-party interest in the property. The property title should be obtained because it should show who has a registered interest in the property. Notwithstanding the registered interest, customary property rights in the jurisdiction may also convey an interest to a spouse or other person and need to be considered. Knowing who and the amount of third-party interest, including understanding any possible "straw owners" for purposes of concealing true financial ownership, will enable the asset management office to determine the defendant's net equity, which will then guide it as to whether the minimum thresholds have been met to initiate restraint action. Restraint of the property does not freeze the obligations through properly incurred mortgages or other lending.

Although this property evaluation will provide an early indication of whether the net equity position meets the asset management office threshold, it is important to also consider the expenses incurred in securing the property and that may arise during the management period as discussed shortly. In some situations, law enforcement agencies may seek to seize real estate that otherwise would not meet the internal policy-based value threshold for seizure. The reason may be that the property has been identified as being involved in criminal activity, and seizure would thus prevent continued use of this asset in criminal acts. Other reasons for seizure of property below the threshold may be to send a message or be in the interest of the local community. When the property is to be seized yet it has not reached the minimum threshold, management approval for that action should be obtained.

6.2.2 Securing the Property

Securing the property involves two aspects: protecting the physical asset itself and ensuring that no transactions can take place against the title. Physical security of the property can be affected by the type and

location of the asset. For instance, a vacant stand-alone property may require security protection to avoid vandalism, whereas an apartment in a well-managed complex is more easily secured. On occasion, the property may be a family home. In such cases, a decision may be needed as to whether the property should continue to be occupied by the defendant or the family, or even seized in the first place (unless required by law). Those decisions may reduce some of the costs, but they also run the risk that the property will be stripped. If the defendant or the family is to remain, tenancy agreements should be put in place. Regular inspections of the property are also recommended at least quarterly—and more frequently if the location requires it or if the property is occupied.

Title preservation will involve notifying the land registry or competent authority of the restrictions in place and, as appropriate, registering the relevant documents against the title so that no new finances can be raised using the property as security. Often, existing lien or mortgage holders will also have security up to the value of the property—which can be more than the amount borrowed. This type of financing agreement enables the borrowing of additional funds without the need to register that increase in lending. Therefore, it is important to notify the lien or mortgage holder at an early stage to ensure that the defendant does not take additional finances against the property while restraining processes are under way.

6.2.3 Income Generated from Property

Consideration should also be given to what income could be generated from renting or leasing the property. The source of the estimate can be a professional appraisal or an internet search on comparable properties in the same or a similar neighborhood.

If the property is tenanted, the tenancy lease likely has no value after seizure or forfeiture. It may, however, be in the interests of the asset management office to keep the tenancy, not only to offset some of the ongoing expenses associated with maintaining the property but also to avoid any negative reaction arising from the government being seen to evict tenants.

When the tenancy is kept, the government (as the new lawful owner) and the tenant should agree to new tenancy or occupancy conditions. In the United States, it is standard practice to enter into arrangements in which the tenant continues to pay rent and any other fees normally associated with a tenancy, but the agreement is moved from the traditional 12-month tenancy to a month-to-month basis where each party has the right to terminate the tenancy by giving 30 days' notice. This approach is driven by the government's aim of selling the property as soon as there is a final court order permitting the sale. For the tenants, the 30-day notice period to vacate may not be ideal, but it does give them time to look for a new dwelling. The immediate sale of the property when the final order is produced may not be the outcome sought by the government, so the arrangements may be altered to provide for such situations.

The consideration for commercial properties follows the same principles as those associated with residential dwellings. Pre-seizure planning

should seek to ascertain the sustainability of current tenants, because sometimes a legitimate business may occupy part of the premises alongside businesses that have been linked to criminal activities.

Because the government is assuming responsibility as a “temporary” owner, it should seek to maintain the value of assets without hurting the interests of legitimate parties. Information at pre-seizure should allow the government to know whether a leaseback could be possible, if there is real value at the end of the line, and similar factors. In the pre-seizure phase, then, hopefully the program gathers an idea about the business sustainability of a commercial property (which is the same as to say its ultimate value) before there is a court order to seize.

6.2.4 Expenses in Maintaining Property Value

The property type (apartment, condominium, terrace, or stand-alone) and the type of title issued over the property (lease or freehold) all affect expenses, which can range from contributions to body corporates or maintenance funds, as well as lease payments, property tax, rates payments, utility charges, and insurance. (See the example in box 6.1.)

Insurance may require additional considerations. The level of coverage may necessitate that an insurance risk assessor be tasked with providing a report to ensure all relevant risks (for example, fire, flood, and tenancy) have been evaluated and appropriate coverage is arranged. Although insurance may be at the discretion of the asset management office, it is good practice to obtain coverage. In some jurisdictions where it is mandatory, a nominated insurance provider is contracted as part of a broader whole of government approach. Other jurisdictions take on the risk through self-insurance; that is, the government will cover any losses. However, because of the commercial nature of asset management and in the interests of managing public funds in an efficient manner, a prudent insurance protocol may be the appropriate way to deal with this aspect of preserving the value of the seized assets for the benefit of all parties. Like other expenses, the asset management office policies should allow for the recovery of the costs of insurance from the proceeds of the sale of confiscated properties, because insurance is a cost incurred in managing the asset.

When costs associated with property management are being considered, several online resources for residential investors are available that provide useful guidance on expenses that may be incurred. Policies also need to address the issue of how to treat rental income and what, if any, expenses can be deducted against this income.

6.2.5 Contaminated Property

A risk with any property is that the property may be contaminated with a hazardous substance or pollutants that pose a risk to human health or the environment. If such property is forfeited to the government, the responsibility for remedying it will be transferred with the title. In the United States, for example, any federally controlled real property for which the proposed use is residential is subject to the regulations promulgated around lead-based

Box 6.1. Mongolia: Confiscation of United Kingdom Residential Property

In February 2019, the Independent Authority Against Corruption of Mongolia (IAAC) initiated a criminal case against two Mongolian nationals, Mr. G and Mr. D, who were high-level officials of a state-owned enterprise (SOE). They were suspected of committing abuse of public position or office, receiving a bribe, and money laundering. The case was opened after a suspicious transaction report (STR) was received from a foreign financial intelligence unit. With the help of the Egmont Group and a subsequent mutual legal assistance request to Russia, Latvia, and the British Virgin Islands, it was discovered that between 2006 and 2017, Mr. D had illegally awarded contracts to foreign entities and received bribe payments totaling about US\$8.3 million. It was also revealed that Mr. G had shared in these illegal proceeds and had transferred his share through an offshore bank account controlled by his son. He used £570,000 to purchase a 110-square-metre property in the United Kingdom. Mr. G pleaded guilty to money laundering and abuse of office, and Mr. D was found guilty of the same offenses. As part of the plea deal with Mr. G, he agreed to return the United Kingdom property to the government of Mongolia by transferring the property to the SOE where the defendants had been employed. The plea deal avoided part of the proceeds being applied to cover the costs of the United Kingdom authorities if formal confiscation processes had been initiated through the United Kingdom courts.

At the time of transfer, the property had a market value of £1.2 million. A task force led by the Ministry of Finance and involving IAAC, prosecutors, and other ministries decided to rent the property with the intention of using the income to support an orphan children's center for educational purposes. The SOE contracted with a professional property company to manage the rental property. However, subsequent analysis of the cash flows over a two-year period showed that the expenses—including transferring ownership; state, local, and council taxes; car park; estate; estate reserve fund; accounting; and utility fees, as well as the rental brokerage service charges—exceeded the rental income by about £60,000 per year.

The negative return—compounded by difficulties in communicating with the property managers, unknown future market price, and possible need for property renovations—have led the SOE to sell the property. The funds from the sale will be applied directly to support the orphanage.

Source: IAAC.

paint, which require the government to undertake certain abatement actions of lead-based paint contamination for forfeited residential property. The risk of contamination in the case of land that has been used for commercial purposes can give rise to significant costs. The illegal dumping of pollutants may have taken place, or there may have been leakage from holding tanks associated with a legitimate business. Ensuring that the asset management office policies are clear on how such a risk is to be considered—and if necessary, investigated—before making the decision to seize is important to avoid unforeseen and potentially very costly mistakes.

6.2.6 Managing the Property

An overarching consideration in real estate management is whether the asset management office is sufficiently resourced to take on the task or whether it should be outsourced to a third party with a proven record of managing property so that the value is preserved and the condition of the property will be effectively recorded. The asset management rules for specific assets should address those points. The use of experts reduces the burden on asset management office staff, and when a property is rented, for example, expert management is necessary to immediately address any issues such as water damage or broken items, as well as to carry out property inspections on a regular basis (monthly or quarterly) to ensure that the tenant is taking proper care of the asset.

6.3 Personal Property

Personal property may be divided into three subcategories: conveyances; jewelry, art, antiques, and collectibles (JAAC); and cash and financial instruments. Some assets in this class, such as conveyances, can lose value quickly. Others, such as JAAC, may hold a high value and be easily transported, hidden, and misappropriated. Cash and financial instruments are the more prevalent assets seized, with the process to freeze and seize them often being relatively straightforward.

The general pre-seizure planning processes discussed in chapter 3 apply to and inform the price appraisals and the decisions on whether to seize personal property assets. The following discussion on the different asset classes provides additional information that will aid the evaluation process.

6.3.1 Conveyances

Conveyances can be viewed as anything that is movable and can transport people, often with engines or wheels. The most common are motor vehicles such as cars, SUVs, recreational vehicles, and motorcycles, although they can also include airplanes, sailboats, or other vessels such as dinghies. Unless unique, conveyances are likely to lose value, even more so if not protected from the elements.

As with all assets, pre-seizure policies will dictate, in each jurisdiction, what should be seized and what should not—which may mean that in some jurisdictions motorcycles may be seized, whereas, for example, in the United States, unless a motorcycle is an exceptionally unique one, it will likely not be the subject of a seizure order.

Pre-seizure planning for conveyances requires establishing the value (minus any third-party interest or liens), information, and history. Programs must also verify that the conveyance has not been stolen and is not a rebuilt wreck that could expose the subsequent purchaser to risk, and therefore would not be an item that would be resold by the asset management office. Similarly, if a vehicle has been used as an instrumentality of crime, it may have been altered for this purpose and thus may not be

Box 6.2. United States: Confiscation of Unique Car Collection

DC Solar, a California company, was found to have engaged in fraud between 2011 and 2018 through the sale of mobile solar generator units for cell phone towers to investors. The business amounted to a Ponzi scheme as many of the solar units sold did not exist and new investor money was used to make payments to older investors. The scheme, which involved false financial statements, false lease contracts, and other deeds to conceal the fraud, also included income from federal tax credits; as such, DC Solar defrauded both individual persons and the US government.

Eventually, the case led to prison sentences for owners Jeff and Paulette Carpoff and several associates and employees, and it represented the largest criminal forfeiture in the history of the [Eastern] District [of California] with over US\$120 million in assets forfeited and made available to the victims. The scheme also targeted the United States Treasury, with US\$500 million returned to the Treasury by January 2020.^a Among the forfeited assets was a collection of 148 luxury and collector vehicles, which included the 1978 Firebird once owned by actor Burt Reynolds. This historical auction resulted in recouping about US\$8.233 million for victims.

The US Marshals Service's 2019 annual report said that the raid, which initially seized 185 vehicles, was "the largest single vehicle seizure in the history of the Asset Forfeiture Program."^b

The collection and the case's notoriety allowed for a live auction, which was simulcast on the web to increase the number of possible participants and thus drive prices higher. An auction preview took place for two days before the auction and the auction took place pursuant to an interlocutory sale order in the federal case, about two years before sentencing. Eventually, the 148 cars were sold for US\$8.233 million, including US\$215,000 for a 1969 Dodge Charger Daytona and US\$232,000 for a 1967 Ford Shelby GT500E Super Snake, the two highest priced cars in the auction.

a "Top Executives Plead Guilty to Participating in a Billion Dollar Ponzi Scheme—the Biggest Criminal Fraud Scheme in the History of the Eastern District of California," press release, US Attorney's Office, Eastern District of California, January 24, 2020. <https://www.justice.gov/usao-edca/pr/top-executives-plead-guilty-participating-billion-dollar-ponzi-scheme-biggest-criminal>.

b US Marshals Service FY 2019 Annual Report, US Department of Justice: US Marshals Service, <https://www.usmarshals.gov/sites/default/files/media/document/PUB-2-2019-Annual-Report.pdf>.

suitable for resale. For example, the United States will not resell any vehicle used in drug trafficking and in which secret compartments have been built to conceal drugs or money.

In many jurisdictions, there are several sources of information publicly available that can help inform the potential sale price of the conveyance, often quoted based on a private, trade-in, or dealer sale. This information can also help to guide the sale price if the asset ends up being held for a period before disposal. When a seizure involves large quantities of vehicles or when the conveyance is unique, it can be significantly more difficult to establish the price range in which the conveyance may be sold. Box 6.2 describes a case involving the auction of luxury vehicles.

Marine vessels and aircraft pose other significant challenges, which are discussed later. The same principles noted for vehicles, however, also apply when considering marine vessels and aircraft.

Vehicles

Motor vehicles, including motorcycles, are assets that are often seized by law enforcement agencies. They pose a substantial risk of being damaged, stolen, or hidden by the defendant. Therefore, in every instance, unless there is a statutory court order or similar that requires other treatment, motor vehicles should be taken from the defendant or other party and stored in a secure storage facility. It is important that the location of the storage facility and the name of the transport agents carrying out the transport of the seized vehicles are not divulged to any outside person without good reason. It is also not uncommon for high-end vehicles, boats, and other conveyances to either be fitted with or have tracking device technology concealed in the vehicle that would enable the vehicle to be located. The authorities should conduct a thorough search for such devices so they can be deactivated. If the vehicle may have a built-in system, it may require reference to the manufacturer's handbook.

The number and size of assets under management will determine the storage requirements. In the United States, an established contractor is typically responsible for storage and conducting regular inspections to ensure storage conditions are met. The contractor is required to follow asset inventory and tracking procedures established and approved by the asset management office.

If the asset management office is responsible for storage, it is crucial to follow a strong set of procedures to preserve the value of the vehicle. For example, a car worth US\$250,000 would need more maintenance and better storage conditions than a US\$10,000 vehicle. Leaving a vehicle exposed to the weather should never be an option.

The following steps should be considered during pre-seizure planning: locating, inspecting and photographing, completing a receipt (receipting), and transporting the vehicle.

Locating the Vehicle

The vehicle will probably be at one of three locations: in the custody of law enforcement; with the defendant, a family member, or an acquaintance; or hidden (location unknown).

Vehicle in the custody of law enforcement. If the vehicle is with a law enforcement agency, it may have been taken in evidence and subsequently become subject to a confiscation order. This action may have resulted in noncompliance with the normal process of evaluating the net asset value. Nevertheless, the law enforcement agency will be keen to hand vehicles over to an asset management office because they can take up limited and valuable space in law enforcement property or be costing the law enforcement agency directly for storage charges.

The asset management office should implement its policies when taking possession. These policies will include confirming the identity of a vehicle held by law enforcement, receiving confirmation that the vehicle has been searched thoroughly (or undertaking the search itself if the workers are appropriately trained), and photographing the motor vehicle inside and out.

Contemporaneous notes should be made using the best means possible (notebook, video, voice recording) and the asset management office should document the transfer from the identified law enforcement officer in attendance. Standard information that should be gathered and recorded in the asset register includes the VIN and chassis numbers of the vehicle, the expiry of the warrant of fitness, the certificate of fitness, and the registration of the vehicle.

Vehicle with the defendant, family member, or acquaintance. Safety of asset management officers and contractors assisting is paramount in these circumstances. It is best practice to always be supported by law enforcement when seizing assets directly from defendants, family members, or acquaintances. This support will enable the asset management office staff to get on with the job at hand in the most efficient way possible and without undue interference with its court-ordered functions.

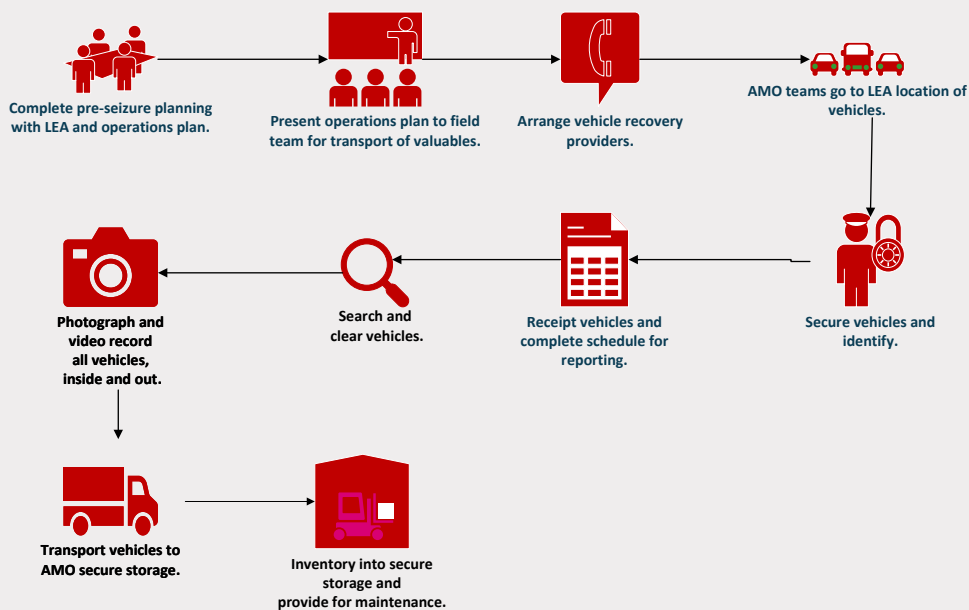
As noted earlier, it is important to take steps to ensure that the storage location is not revealed. This need may require additional steps using third-party contractors to assist with the removal of the vehicle. Recording all actions around the seizure of the vehicle will provide protection to the asset management office and other persons engaged in this process and provide a record of the condition of the vehicle when seized. A receipt must be completed, and a copy of the receipt must be given to the defendant or other person (the law enforcement officer in charge at the site if no other person is willing to take the receipt). Two signatures should be on the receipt in all cases, one of those signatures being from a person authorized by the asset management office.

Vehicle is hidden and the location is unknown. When a vehicle's location is unknown, the asset management office should request assistance from law enforcement to locate it. This step usually requires issuing a formal notification and raising an alert, as provided by internal asset management office procedures. If the asset is not found, the law enforcement agency or prosecutor will need to be advised before the next due date for the restraining order to be renewed or confiscation order to be made, because seeking further restraint may need to be reconsidered.

Inspecting and Photographing the Vehicle

When a vehicle is located, an inspection should be carried out in the field. The inspection should include a search for items within the vehicle that are not part of the seizure or could be considered evidence to be used in any criminal proceedings, as well as a general condition and roadworthiness

Figure 6.2. Management of Seized Vehicles Process



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

inspection. Appendix D is a sample vehicle inspection form that shows the type of information that should be recorded during the inspection.

Photographs (or video) are especially important for documenting the condition and contents of vehicles when they are seized. Generally, full visual coverage of a vehicle's interior and exterior can be completed with approximately 12 photographs.

Completing a Receipt for the Seized Vehicle

The use of receipts is vital to the operation of a competent asset management office. Every transfer and movement of seized assets must be recorded to preserve the integrity and trust of the confiscation regime and, more particularly, that of the asset management office. A copy of the receipt, be it in physical form or electronic, should be kept in the case file to prove the chain of custody of the vehicle. This step is vital for audit and asset security purposes. (See figure 6.2.)

A receipt should contain at least the following information:

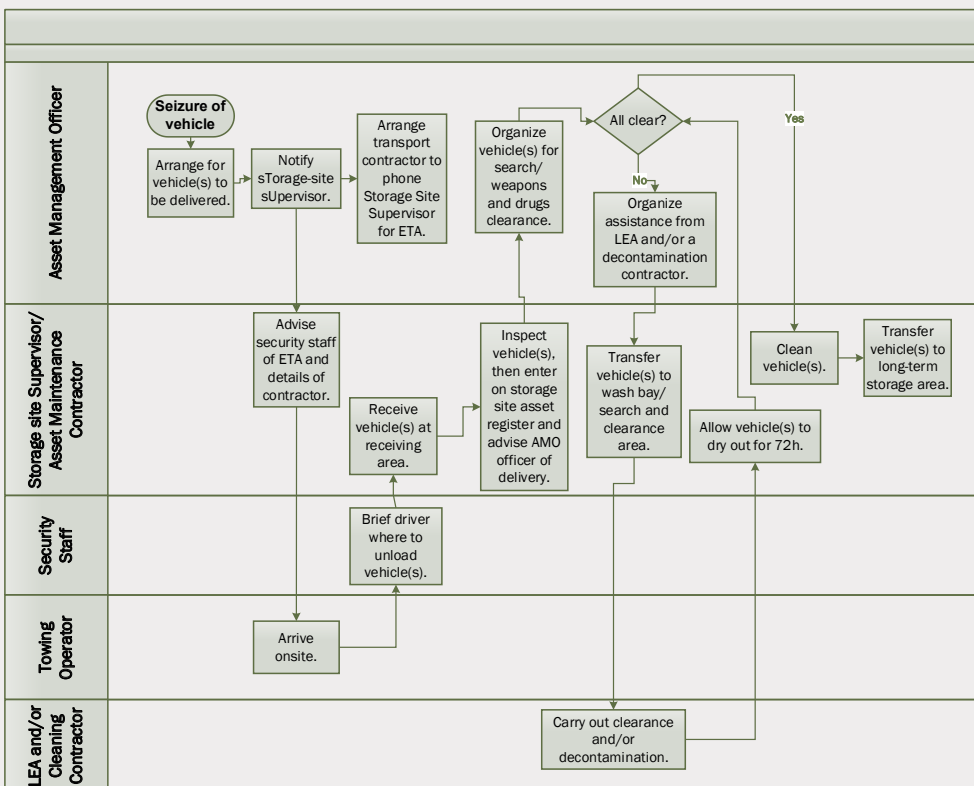
- Case name
- Date
- Time

- Location of seizure/transfer of assets (GPS coordinates if possible)
- List of assets with full descriptions
- Taken from (name and contact information)
- Received by (name and contact information)

Transporting the Vehicle to Storage

As part of the pre-seizure and operational planning phase of seizure, the logistics for salvage and recovery will have been decided and interim instructions put in place for the salvage providers to be in the vicinity of the seizure. It is important to keep an elevated level of security in mind when planning this phase, and to ensure the safety of the salvage operator. Maintaining the secrecy over the storage location of the vehicle may also prevent later attempts to recover or damage the vehicle by the defendant or an affiliated party from whom the property is sought to be confiscated, or their associates

Figure 6.3. The Process for Storing Seized Vehicles at a Facility



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

or family members. Driving a vehicle from the point of seizure exposes the asset management office to risk and should be avoided through effective planning. Figure 6.3 shows the processes that should be implemented once the vehicles are taken into custody and transported to be stored.

Marine Vessels

Marine vessels can best be segmented by their size: small pleasure craft that either are trailerable or can be more easily transported to a place of storage, and vessels that need to remain moored or tied to a dock for storage. Although removal from the water will likely reduce ongoing maintenance costs, effective management of these assets still requires electrical systems, motors, and so on to be checked and run on a regular basis.

If circumstances permit, consideration should be given to contracting professional assistance for all marine vessels. In the case of large vessels, management by the asset management office should not even be considered but rather turned over to a professional experienced with such vessels.

In management of marine vessels, the following factors are particularly relevant.

Boats, including small yachts, pleasure craft, and small fishing vessels.

Whether a seized small boat is going to be stored in a suitable secure open area or at a designated secure facility, the vessel will need to be properly prepared before it is put into long-term boat storage. If professional assistance is not engaged, then the owner's manual that comes with the boat at point of sale can be a useful tool. If the owner's manual is not with the boat at time of seizure, it is possible that a copy can be obtained from a boat dealer or from the internet to ensure that all the recommended regular maintenance tasks are carried out.

If the asset management office takes on the responsibility of preparing a boat for storage, the following are some of the factors that need to be considered:

- **Cleaning:** The boat should be thoroughly cleaned before storage to remove any dirt, debris, or saltwater residue that can cause damage or corrosion.
- **Engine maintenance:** The engine should be flushed with fresh water to remove any saltwater and debris. The oil and filters should be changed, and the fuel tank should be drained or stabilized to prevent any fuel degradation.
- **Electrical system:** The battery should be disconnected and removed, or it should be kept charged to prevent any damage or corrosion. The electrical system should be checked for any loose connections or damaged wires.
- **Hull maintenance:** The hull should be inspected for any cracks, dents, or damage. Any damage should be repaired before storage to prevent further deterioration.

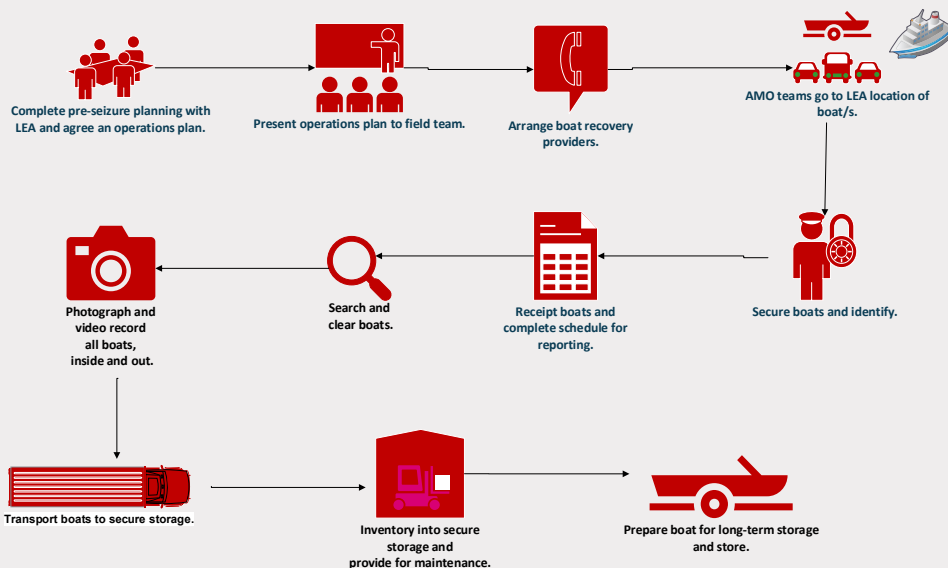
- **Interior maintenance:** The interior of the boat should be cleaned and dried thoroughly to prevent any mold or mildew growth. The upholstery and carpets should be removed or cleaned, and the cabin should be ventilated to prevent any musty odors.
- **Covering:** The boat should be covered with a proper boat cover to protect it from the elements. The cover should be secured properly to prevent any water or debris from entering the boat.

See figure 6.4 for actions needed for managing the seizure of boats.

Large marine vessels, including fishing and cargo vessels. It is possible that the asset management office will be involved in the seizure and management of oceangoing vessels. It is an extremely costly business to run a large ship. The costs to tie it up at a port can be significant and could exceed the true value of the vessel on the market in a brief period. Maintenance of large vessels is also a costly process, because the ship must remain seaworthy, with all engines, electronics, and hull condition in full operating order. The result of neglecting maintenance of marine vessels could be devastating—resulting in the loss of the ship and port access, and the possible need for a salvage operation.

It is imperative that pre-seizure meetings occur so that planning for such a seizure can go ahead with ample time to prepare logistically and

Figure 6.4. Management of Seized Boats



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

financially. Some options that may be entertained are the following:

- Not to proceed with seizure, owing to the costs involved.
- Seize, but allow use of the marine vessel by the owners, under tight constraints at their own cost and risk, with appropriate indemnities to the asset management office.
- License the use of the ship by another business, with similar tight business arrangements as with the owners, and charge commercial leases.
- Seek court sanction to sell the marine vessel without delay and seek costs against the proceeds of sale. It would be prudent to seek an international ship broker for this task to widen the possible pool of buyers.

It is prudent for the asset management office to appoint a ship engineer and agent to oversee the maintenance of the ship while in the custody of the asset management office. Aside from ongoing maintenance requirements and contracting of suitable onboard assistance, duties could include arranging for a full ship survey to provide a full picture of the ship's seaworthiness. A survey could include an underwater inspection (divers required) and full mechanical inspection. Arrangements will need to be made with port authorities to berth the ship in a position that is both secure and out of the way of normal port activities.

Managing a seized marine vessel can be expensive and resource-intensive, and great care should be taken in initial decision-making about ongoing responsibilities. Pre-seizure planning is vital.

Aircraft

Aircraft (commonly airplanes and helicopters) are complex pieces of machinery that require significant care to handle and manage and are prone to deterioration. Often, the only way to hold their value after seizure is to sell them as soon as possible, or to lease them to commercial enterprises. These remedies are not always available to consider, so long-term storage options must also be assessed while the seizure case is pending.

It is costly to operate or store an aircraft. Parking a small jet at an airport hangar, for example, would involve leases, security, maintenance, and movement costs. Aircraft are made to be used and any medium- or long-term inactivity requires very extensive overhaul and remedial work to bring it back to operational status.

Before an aircraft is seized, it is imperative that pre-seizure meetings occur with ample time to allow for logistics and financial planning. Potential considerations should include the following:

- Not to proceed with seizure, owing to the costs involved.
- Seize, but allow use of the aircraft by the owners, under tight constraints at their own cost and risk, with appropriate indemnities to the asset management office.

- License the use of the aircraft by another business, with similar tight business arrangements as with the owners, and charge commercial leases.
- Seek court sanction to sell the aircraft without delay and seek costs against the proceeds of sale. It may be prudent to seek an international broker for this task to widen the possible pool of buyers.

If a professional cannot be employed to manage the aircraft, it would be prudent for the asset management office to appoint an engineer to maintain it while in the custody of the asset management office. Aircraft require ongoing maintenance to remain airworthy. The documents necessary to establish airworthiness include the following:

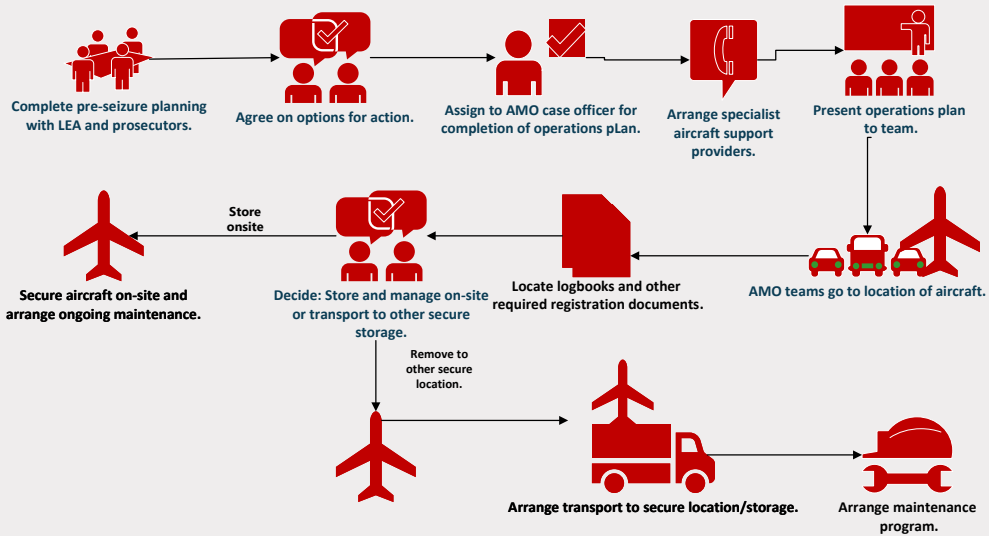
- **Maintenance logbook:** A record of all maintenance activities performed on the aircraft. It includes information such as the date of maintenance, the type of maintenance performed, the name of the person who performed the maintenance, and the aircraft's total time in service.
- **Airworthiness certificate:** A document issued by the aviation authority certifying that the aircraft is airworthy. It is issued after the aircraft has undergone a thorough inspection and has been found to comply with all applicable regulations.
- **Maintenance release:** A document certifying that the aircraft has undergone maintenance and is airworthy. It is issued by a licensed maintenance organization or a certified mechanic after maintenance is completed.
- **Service bulletins and airworthiness directives:** Guidance issued by the aircraft manufacturer or the aviation authority to address specific maintenance issues or safety concerns. These documents should be reviewed and complied with to ensure that the aircraft is properly maintained.
- **Parts and component records:** Records of all parts and components installed on the aircraft should be maintained. This information should include details such as the part number, serial number, and date of installation.

Managing seized aircraft can be expensive and resource-intensive, and great care should be taken in initial decision-making about ongoing responsibilities. Pre-seizure planning is vital. See figure 6.5 for actions needed in managing seized aircraft.

6.3.2 Jewelry, Art, Antiques, and Collectibles

The second broad category within personal property is that of jewelry, arts, antiquities, and collectibles (JAAC). High-earning criminals often acquire a taste for collecting jewelry or art, and sometimes they invest in these assets to legitimize ill-gotten gains or to store or transport the value held by the items.

Figure 6.5. Management of Seized Aircraft



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

JAAC may be the asset class at most risk of losing value. Depreciation may result from misplacing a document verifying authenticity, inadequate storage facilities, underpricing, or poor practices during custody. Often items may require climate-controlled storage, appropriate packaging materials, and other measures to prevent damage or deterioration.

Ideally, investigators should try to anticipate and research as much as possible the targeted assets or collections during pre-seizure planning. Special consideration should be taken in large-scale or complex seizures (for example, when a whole store inventory or a warehouse is seized) to guarantee nothing is lost or mishandled.

Adequate research may reveal that an item with no apparent value may be highly prized for its historical significance. For example, an advertisement for an auction of seized assets by the US Marshals Service lists one of the items up for sale as a first edition of F. Scott Fitzgerald's *The Great Gatsby* novel. Research shows that this first edition can sell for well over US\$100,000.¹ Another US case involved the seizure of one white crystal-covered glove from Michael Jackson's "Bad" tour.² In addition, certain assets may present challenges, such as items that are heavy (a sculpture, for instance, could weigh tons), oversized, or otherwise difficult to transport, or items that require climate-controlled storage.

Custody and management of JAACs require attention to detail. During custody, each asset must be verified, sorted, and tagged. All materials that could attest to an item's historical importance or provenance, or verify its authenticity, must be maintained, including original boxes, documents,

receipts, or an expert's opinion. The agency should take color photographs of each piece with all its related materials, and all seized assets must be secured in vaults or safes.

In the United States, as the government's asset management program grew, a specialized national contractor was engaged. At any important seizure, the contractor would assist in documenting and shipping all items (with the necessary insurance) for long-term storage by the contractor itself (or a local vendor, as needed, for large or specialized items). Although costly, such measures significantly preserve the value of the assets and effectively transfer liability from the government to the contractor until adjudication. Additionally, this method neutralizes the chance of internal loss and reduces oversight responsibilities for such high-value assets.

Jewelry

Once assets are taken into custody, they must be inventoried by the storage vendor upon receipt. The program needs to ensure a clear chain of custody, which has specific requirements for jewelry and art collectibles to prevent fraud (for example, exchanging an authentic piece for a forgery). Asset management programs need third-party vendors to estimate value, authenticate, and ensure that all items are stored according to contract specifications and that all certification or authentication documents or materials are properly maintained. All of this care involves an investment by the asset management office, of course, but it is the only way to ensure value will be preserved and returned to victims. In high-volume seizures, such as in the Madoff case (see box 6.3), the specialized contractor should either participate directly or arrive at the scene once it is safe, and as early as possible, to make sure that the assets are properly itemized and handled.

At the disposal stage, items may be returned or sold pursuant to a forfeiture order. In either case, it is important to make sure the asset is properly preserved, because damage may result in depreciation or potentially costly lawsuits by the owner. Online, live, or hybrid auctions may increase participation and price and foster greater transparency in the process.

Taking custody and transfer of an extensive collection of seized jewelry should follow the same process designed for bullion discussed in the Bullion, Coins, and Gemstones section. By contrast, asset management officers should be able to transport smaller volumes (fitting into an easily handled, secure bag or box, for example) when appropriate security measures have been considered and put in place.

When jewelry is seized, three values need to be assessed—replacement, indemnity (for insurance purposes), and resale. These values will differ, but this information must be readily available to assist with managing both law enforcement agencies and respondent expectations as to value. This is particularly relevant in dealing with one-off or small quantities of jewelry, where the realizable value is low unless the resale potential is favorable. For insurance purposes, photographing the jewelry is particularly important, especially when items are significant and valuable. Copies of the

Box 6.3. United States: Auction of Significant Collection of Seized Assets

The Madoff case was the biggest and most elaborate Ponzi scheme ever discovered. Bernard Madoff founded Wall Street firm Bernard L. Madoff Investment Securities LLC in 1960 and in the subsequent decades gained enough good standing to become several times chairman of Nasdaq, one of the most important stock exchanges in the world.

The financial crisis of 2008 uncovered the fact that Madoff's hedge fund was a Ponzi scheme. Ponzi schemes—named after Italian swindler Charles Ponzi, who operated in Canada and the United States—are fraudulent investing systems that promise investors high returns with no risk, paying returns to early investors with the contributions from new investors. These schemes, like pyramid schemes, eventually come undone when inflows from new investors are not enough to cover the outflows to older investors or when many investors try to cash out, which is what occurred with the Madoff scheme during the 2008 financial crisis.

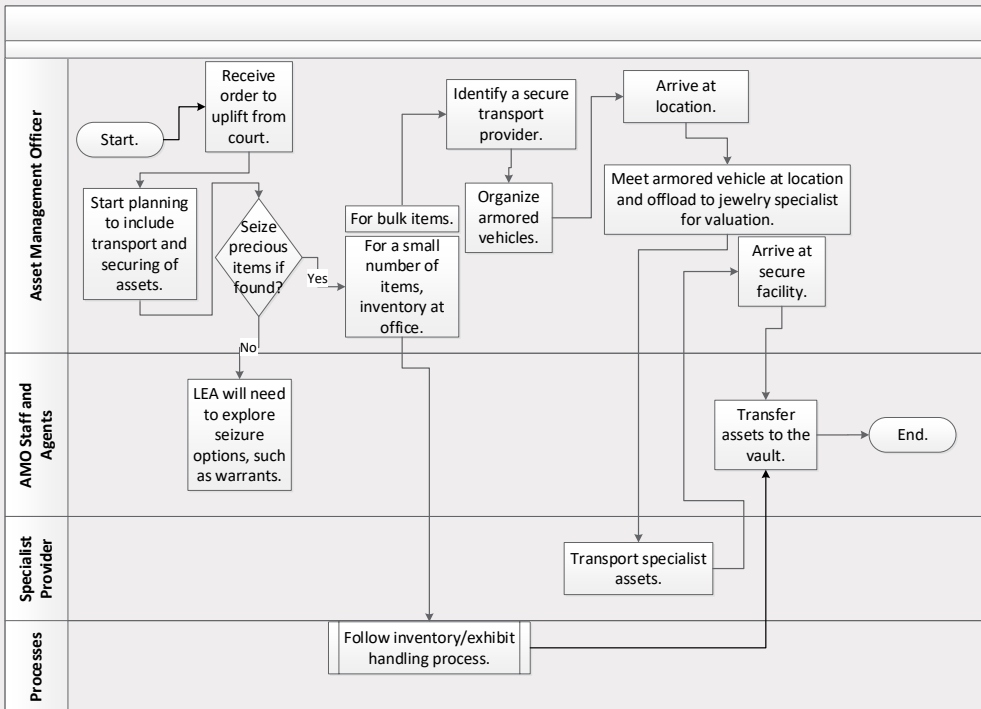
The Madoff Recovery Initiative recovered and settled US\$14.5 billion worth of assets from Madoff, his companies, and associates. By March 2022, US\$13.7 billion had been distributed, realized from all asset classes. Among these assets was an amazing collection of 18,000 pieces of jewelry, watches, and collectibles. A 400-lot auction of some of this collection held in 2010 fetched over US\$2 million, including US\$550,000 for Madoff's wife's 10.5-carat diamond engagement ring. This auction, though, was only the culmination of a long process that started with the painstaking task of collecting, inventorying, tagging, photographing, and shipping each piece.

Sources: The Madoff Recovery Initiative, <https://www.madofftrustee.com/>; CBS News, "Ruth Madoff's Diamond Ring Sold for \$550K," <https://www.cbsnews.com/newyork/news/government-sells-spoils-of-madoffs-lavish-life/>.

photographs should be provided to the asset management office and to insurance providers.

Given the ease of concealment and transportability, the storage of jewelry must be carefully managed and follow proper protocols, including the use of a vault or significant safe at a secure facility operated by the asset management office. If this arrangement is not feasible, the asset management office should consider engaging a private vault provider to lease safe-deposit boxes. Access to these safe-deposit boxes should be carefully managed, with restricted access and security protocols, such as requiring at least two authorized officers to access it together at any one time. These rules should be enforced by the safe-deposit box provider. Jewelry should be regularly audited while in storage and in the custody and control of the asset management office, with a full record of these audits kept for quality control, stock management, and insurance purposes. Figure 6.6 shows the processes that should be implemented for the management and transport of seized jewelry.

Figure 6.6. Management and Transport of Seized Jewelry



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

Art, Antiques, and Memorabilia

The seizure and management of art collections, antique furniture, and antiques should follow the same procedure designed for jewelry as it relates to receipt and photography. During pre-seizure planning, consideration must be given to the appropriate insurance, transportation, and storage requirements, which may be extensive in the case of high-value assets. For example, to preserve value, the storage of artwork may have extensive requirements for humidity, temperature, and vibration/impact levels.

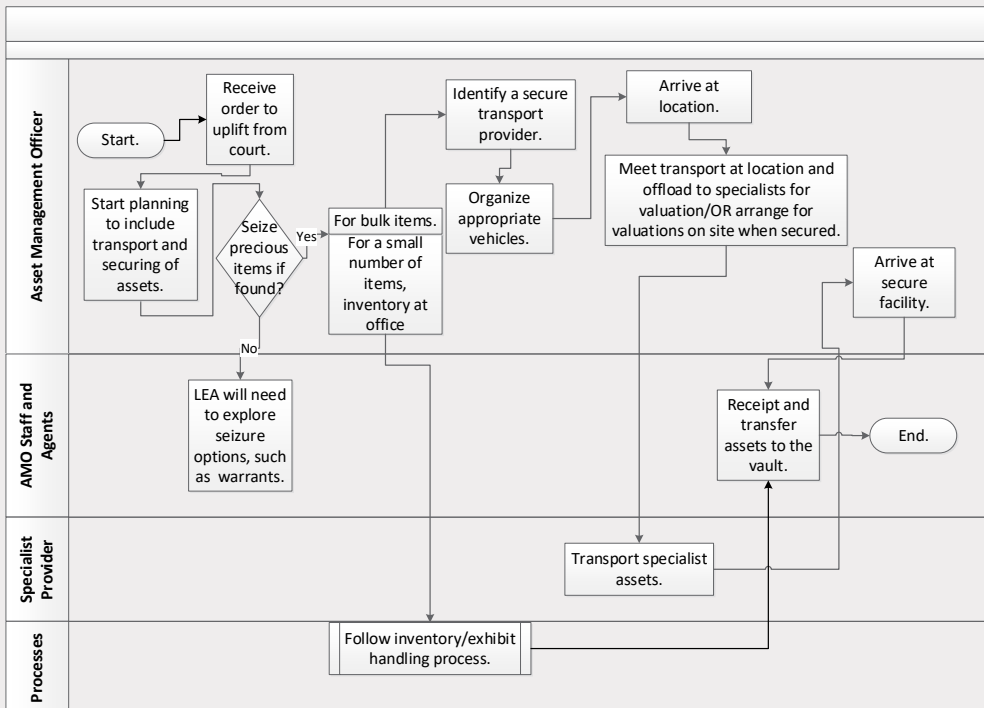
The type of transport employed from the site of seizure to a secure facility for storage is determined by the type and size of the asset. For example, it would not be advisable to transport works of art (such as paintings) in an open truck, subject to damage from sunlight, road grit, and inclement weather. In such cases, a vendor specialized in transporting artworks should be used instead. In the absence of a suitable service provider, the items should at least be packed with utmost care. This task may require building and using packing crates with slings sourced from a specialized supplier.

Items of cultural value (antiquities) often hold considerable monetary value and cultural significance and must be handled with extreme care—preferably by a specialist. Before deploying a specialist to the field, the asset management office must ensure that conditions are safe, including by consulting with the law enforcement agency and making any necessary arrangements. If the circumstances allow it, the items may also be kept in place in this initial stage (for example, where the item is found in a vault or other secure location, and where control can be transferred to the asset management office without delay or barriers). Figure 6.7 shows actions required for managing seized art collections, antique furniture, and items that are culturally significant.

6.3.3 Cash, Financial Instruments, Bullion, Coins, and Gemstones

Another subcategory of personal property is cash and financial instruments. This group may include physical cash, savings or checking accounts, and other financial instruments (such as certificates of deposit,

Figure 6.7. Management and Transport of Art Collections, Antique Furniture, and Culturally Significant Items



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

investment portfolios, foreign exchange accounts, life insurance policies, and retirement accounts), as well as lottery winnings, bullion, coins, and gemstones.

Cash

When dealing with cash and liquid funds, the asset management office should ensure proper accounting protocols and implement supporting policies from pre-seizure planning through confiscation and management. Where relevant, such policies should ensure the accounting of principal and interest at the time of confiscation, determine what type of account should be opened to receive seized funds, and guide the treatment of any interest earned during management.

Physical cash. When seizing physical cash, the asset management office should thoroughly document the process by video and photography, including during counting. If cash has been seized by other agencies, the asset management office policy should set out whether and when the cash should be delivered to the asset management office, or whether the cash should be deposited into a dedicated deposit account operated by the asset management office. Clear guidance is important because some law enforcement agencies have policies that prohibit the holding of physical cash once an operation is completed.

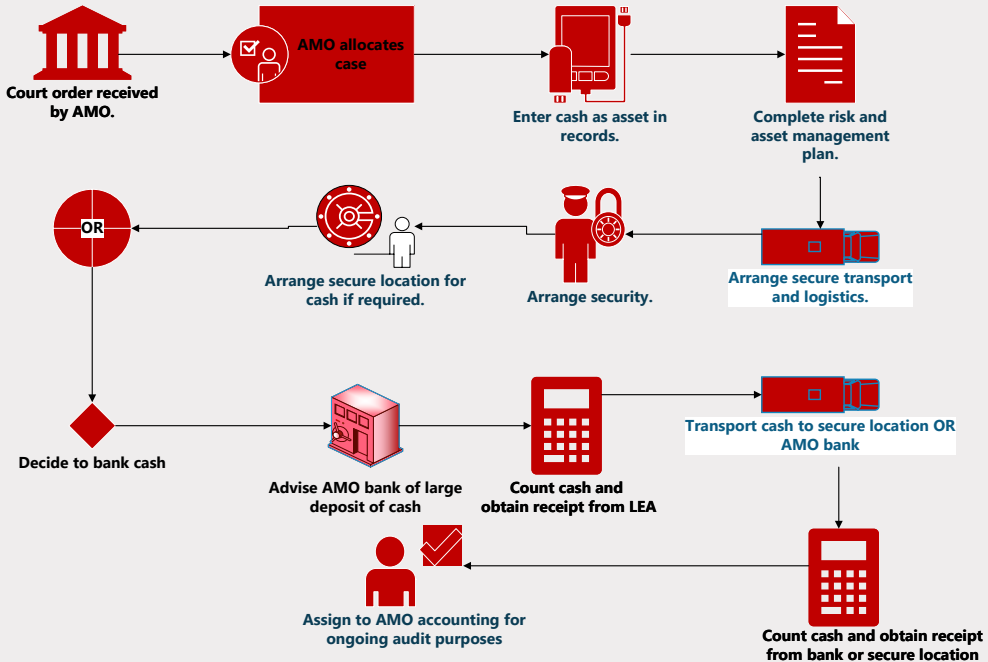
When the law enforcement agency requires that some of the physical cash be kept for evidentiary purposes, the related processes should be well documented. This decision typically requires approval and agreement at a senior level by both the asset management office and law enforcement agency. These measures are often justified when further forensic analysis is required or the method of storage or bundling is of evidentiary value.

If the cash seizure was made by the asset management office, the funds must be quickly deposited into the asset management office account set up for this purpose. The applicable policy should include a target time frame for this deposit and the process to be followed in case of noncompliance.

In the United States, these funds are kept until adjudication in a Seized Assets Deposit Fund, which is an interest-bearing account, separate from the Assets Forfeiture Fund. Each document in the case file must be maintained separately, as well as a monthly reconciliation following custody records in the asset tracking system. Each asset is identified by a unique number and there are strict auditing and accounting rules. Physical cash cannot be accepted by the US Marshals Service, so the law enforcement agency in charge must take the cash to a local contracted bank, deposit it, get a receipt, and then transfer the money to the Marshals Service account. This process ensures a complete chain of custody from receipt to transfer. (See figure 6.8.)

Bank account balances. As soon as the asset management office receives an order for preservation or confiscation (or both) of bank account balances, relevant authorities should contact the bank's manager or appropriate section manager (typically the fraud section of a financial institution).

Figure 6.8. Management of Physical Cash

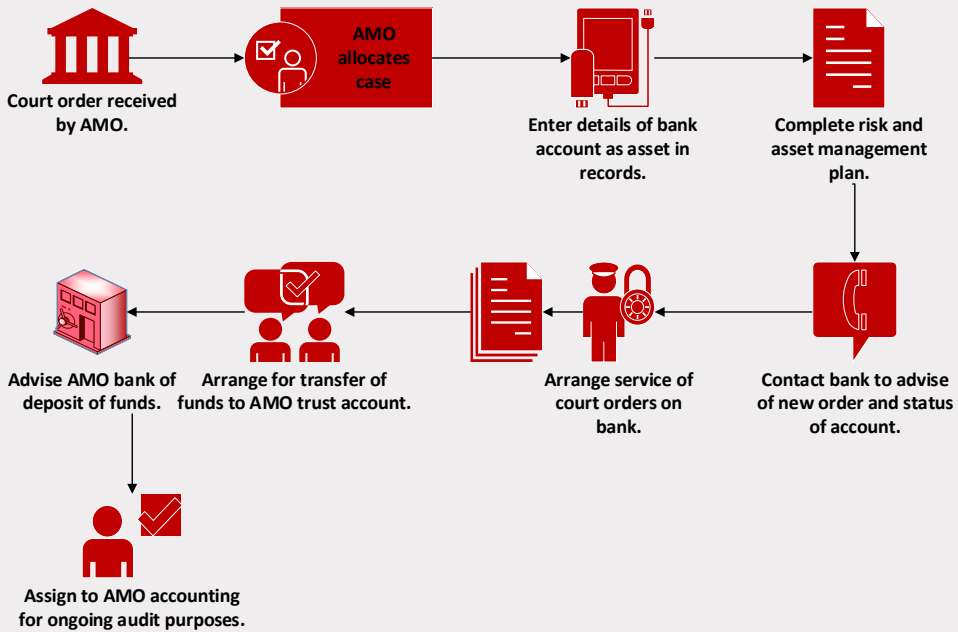


Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

Internal policies must address whether this initial contact with the bank comes from the country’s central bank or asset management office. In any event, the bank must be provided, as soon as possible, with a copy of the order (sent electronically) as an interim measure to ensure that the bank or other financial institution is on notice so that the account is at least frozen if the investigating law enforcement agency has not done it as part of the initial operation termination.

Once funds are in the account, regular checks with the bank should be scheduled to ensure the fund’s balance integrity during the life of the restraint order, if there is no order for the funds to be placed into the custody and control of the asset management office. When an order is made to transfer the funds to the asset management office, it should take place as soon as practicable to the asset management office trust account or dedicated banking facility.

This asset management office account should receive commercial business interest rates on deposits held by or for it, which will ensure preservation of the funds’ value. If the amounts are exceptionally large, then the asset management office should consider seeking approval to place the funds on term deposit given that this option will usually pay a higher return. (See figure 6.9.)

Figure 6.9. Management of Seized Bank Account Balances

Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

Financial Instruments

A financial instrument is a tradable asset or a negotiable item that has monetary value. The most common examples are stocks, certificates of deposit, mutual- or exchange-traded funds, along with various derivative contracts and foreign exchange accounts. Often a selection of these asset types may form an investment portfolio.

Certificates of deposit. A certificate of deposit (CD) is a savings deposit certificate usually issued by a commercial bank that has a fixed maturity date and pays a specified fixed interest rate. The term of a CD can range from 1 month to 10 years or more and will often require a minimum amount of US\$1,000 and multiples thereof. Interest can be paid at specific intervals over the life of the CD or on expiry. Interest can also be reinvested or paid to the holder. On expiry, the holder can request the principal and any accrued interest be paid into a specified account, or the CD can be automatically reinvested. If the CD is broken midterm, the holder likely pays a penalty based on an adjusted interest rate. If the holder requested the CD be reinvested, notice of the change of intentions must be given before the expiry date. Historically, CDs were evidenced by a paper certificate;

however, today each CD will most commonly be reflected as a separate account in the electronic records of the issuing institution in the name of the holder.

As CDs can be issued with various terms, the asset management office should take immediate steps to notify the issuer to freeze the principal and interest, including instructing the institution to not pay out further accrued interest to the holder. The objective of the asset management office is to realize as much value as possible for any asset, so a decision will need to be made when a forfeiture order is obtained as to whether it is best to leave the CD for the full term or break the CD. Conditions and decisions involving CDs should be the subject of a clear asset management office policy.

Investment portfolios. If an investment portfolio consisting of public company shares as well as other financial instruments is restrained, or evidence of a share portfolio is unearthed during an investigation under a global asset preservation order, the portfolio may—depending on its size—need to be managed by a reputable stockbroker firm to ensure it will retain its value. Although expert management may not be required for all investment portfolios, expert advice should still be used to appraise a portfolio and identify any circumstances that may affect its future value, such as the date a stock goes ex-dividend or any maturity dates approaching.

Investment portfolios typically operate through a registry and may be accessed using specific applications designed for a computer or cell phone. These are secured by a client password and often involve multilevel authentication. Identifying the applications installed will assist in identifying where assets are held, and if the law enforcement agencies are able to locate the unique identifiers, these should be provided to the asset management office to expedite securing and managing the assets.

The ownership record of public shares is contained within a share registry. The administrator for that share registry must be advised of the court order and instructed that all trading of those shares must be frozen. Sealed copies of the order may need to be served formally on the registries, so arrangements may need to be made with the law enforcement agency or prosecutor to ensure that further orders are sealed, if required.

Because the share market and therefore the value of shares can be volatile, it may be prudent for the asset management office to seek directions from the court or other authority to sell the shares and hold the funds from the sales, to preserve the value of the asset as at the time of seizure. It should not be expected that the asset management office would trade and manage a share portfolio, unless specifically directed to do so and with appropriate indemnities. In some jurisdictions, the asset management office may have legislative authority to dispose of volatile assets, such as shares, or have specific protections in legislation against potential liability from not trading shares.

Given what can become a complex asset to manage, the best way to deal with these investment portfolios is to liquidate them if possible, thus mitigating risk for the asset management office. If liquidation of the asset

is not ordered by the court, which may arise if, for example, the defendant objected to the liquidation of investments, the asset management office should ensure that investment decisions are conservative. The objective here is to maintain the value of the investments, as opposed to trying to enhance it.

Foreign exchange accounts (forex). Forex accounts operate to give investors and traders the ability to hold and trade foreign currencies. When forex accounts involve large holdings, they are likely managed by a professional. Given that expert management is probably needed and that significant profit or loss can occur, careful assessment will be required, and the involvement of a professional is advisable to make an informed decision on whether the forex accounts should continue to be managed or be liquidated. Management of the account is likely only a consideration if it is an exceptionally large seizure of foreign exchange fund portfolios, in which case a contract with an approved bank or the financial institution to manage the funds on behalf of the asset management office would be needed. When a forex account is broken up, the funds are to be converted to local currencies and placed in an interest-bearing account.

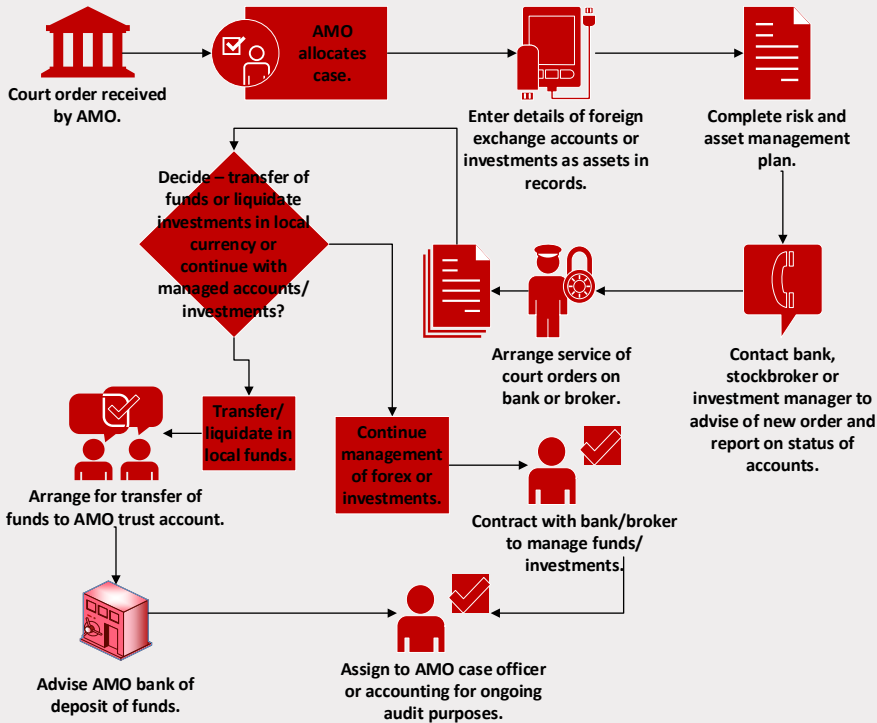
This decision-making process should be conducted with the sanction of the court and with the consent of the defendant, if at all practicable. See figure 6.10 on management of seized investment portfolios.

Life insurance policies. The value that can be redeemed from a life insurance policy depends on the type of policy and its maturity level. There are two main types of life insurance policies: term life and cash-value. Term life policies pay out only upon the death of the policyholder, while cash-value policies earn interest on the premiums paid and have a surrender value. Therefore, the asset management office should focus its efforts on cash-value policies, because they have a higher potential for value and can be more beneficial to manage.

Cash-value policies offer many benefits, for example, by reducing the holder's tax liability or serving as security or collateral to other transactions. Ultimately, a cash-value policy will pay out a death benefit, with the insurer retaining the premiums. If a cash-value policy is surrendered prematurely, fees will apply. The result might be the loss of most of the policy's value, especially in the early stages of investment.

Given the complexities surrounding cash-value policies, the asset management office should consider seeking only a restraint order instead of a seizure order. The asset management office should obtain a restraint order as soon as possible to preserve the policy's value and direct the insurer to maintain the investment as of the order date. The beneficiary of the policy should then be recorded as the asset management office, or the entity used by the asset management office for such purposes. During the restraint period, the asset management office may engage in discussions with the insurer to determine the asset's value and decide whether to proceed to confiscate it.

Figure 6.10. Management of Seized Investment Portfolios, Including Shares and Forex Accounts



Source: Guy Sayers. Note: AMO = asset management office.

Lottery tickets. Lottery tickets can be considered as property that can be seized in a criminal confiscation case because they have a monetary value and can be bought and sold like any other asset. When a person purchases a lottery ticket, that person is essentially buying the right to a potential future payout. If that ticket wins, the owner of the ticket has a legal claim to the prize money. This claim can be bought, sold, or transferred to another person, just like any other form of property. Therefore, if a winning lottery ticket is purchased with proceeds from criminal activity, it can be seized as part of a criminal confiscation case.

Furthermore, lottery tickets can be seized under asset forfeiture laws, which allow law enforcement agencies to seize property that is suspected to be related to a crime or the fruit of a crime. If a lottery ticket is suspected to have been purchased with proceeds from criminal activity, it can also be seized as part of an asset forfeiture case. See box 6.4 for two cases involving lottery tickets.

Box 6.4. United States: Seizures of Lottery Tickets

Case 1: Seizure of US\$50,000 Winning Lottery Ticket Bought with Proceeds of Crime.

In Decatur, Illinois, a woman lost her winning lottery ticket worth US\$50,000 when her home was raided by the police after her boyfriend was suspected of dealing drugs. Using asset forfeiture legislation, the police believed that the lottery ticket was purchased using proceeds from drug dealing. Although a trial court ruled that the lottery ticket could be returned to the girlfriend, the appellate court reversed the decision, allowing the police to keep the ticket and the winnings.^a

Case 2: Use of Winning Lottery Ticket to Launder Illicit Funds. In 1991, Michael Linskey won a lottery ticket payout worth US\$14.3 million, which he co-owned with his brother, Patrick Linskey, Kevin Weeks, and Whitey Bulger. The latter three were allegedly affiliated with the Winter Hill Gang, a criminal organization based in Massachusetts that was involved in various criminal activities, including extortion, loan-sharking, gambling, drug trafficking, violent crimes, and murder. The Lottery Commission paid the winnings to Michael Linskey, who arranged for the South Boston Savings Bank to disburse the funds among the four owners. Under this arrangement, Whitey Bulger's share, US\$119,408 per year before taxes, was deposited in a joint account he held at that bank with his brother, John Bulger. In January 1995, Whitey Bulger was indicted for racketeering and other offenses related to his alleged organized crime activities of the Winter Hill Gang. He disappeared and was not recaptured until 2011, after a 16-year manhunt, and was sentenced to two life sentences for 11 murders.

On July 17, 1995, the federal government brought an in rem civil forfeiture action against Whitey Bulger's share of the prize, based on the theory that he had purchased the ticket as a money-laundering device. Specifically, the government alleged that Whitey Bulger had paid Michael Linskey US\$700,000 in cash for his share of the ticket after it won the jackpot, thus laundering illegal criminal proceeds by replacing the tainted funds with apparently legitimate payments from the Lottery Commission. The district court entered a default judgment forfeiting the property in January 1996. Subsequent litigation raised doubt over the money-laundering theory; however, the forfeiture remained.^b

- a Stacey A. McCullough, "Police Take Winning Lottery Ticket during Drug Raid," blog, January 13, 2017, <https://www.smcculloughlaw.com/kane-county-criminal-defense/police-take-winning-lottery-ticket-during-drug-raid>.
- b *United States v. One-Sixth Share of Bulger in All Present & Future Proceeds of Mass Millions Lottery Ticket No. M246233*, Casetext, April 14, 2003, <https://casetext.com/case/us-v-one-sixth-share-lottery-kt-m246233>.

Bullion, Coins, and Gemstones

When valuable items are seized by law enforcement agencies, transporting these assets raises potential security risks, requiring a high degree of planning and operational oversight.

Security considerations. Before the asset management office proceeds to transport or transfer any precious metals or gemstones, a security assessment is vital. If proper mitigation procedures are not implemented and effectively followed, asset management office staff and contractors will be exposed to potential robbery and other risks. Indeed, transporting precious items may attract nefarious actions with severe consequences, including injury or death of staff, agents, or other contractors, risk to bystanders, monetary exposure of the asset management office for the loss of seized goods, criticism of the asset management office and the law enforcement agency involved in the case, and possible political vulnerability. Nevertheless, several controls can be put in place to minimize such risks. The most effective alternative is to eliminate the need to transport the assets altogether. For example, if the current holders of seized bullion are trusted, secure service providers, it may be more efficient and safer for the asset management office to contract with them directly and pay a storage fee than to move these assets off-site and find suitable storage elsewhere—particularly if the volume is sizable. However, that course of action may not be advisable in different circumstances, for instance, when the bullion is seized from a crime scene or from the defendant’s control.

Another way to manage this risk is to transfer it to a third party by contracting the physical transportation of the goods to a specialized provider. Although it may not be entirely cost-effective, it is a practical solution that minimizes risk to all involved.

Transport and management. Irrespective of risk, pre-seizure planning is essential for any operation, along with operational planning and communication with all participants involved. Specifically in the seizure of bullion, the asset management office should consider that gold, silver, and platinum are very heavy and often require specialist transport to move from one place to another. By contrast, coins and gemstones are typically seized in smaller quantities and pose relatively fewer logistical challenges.

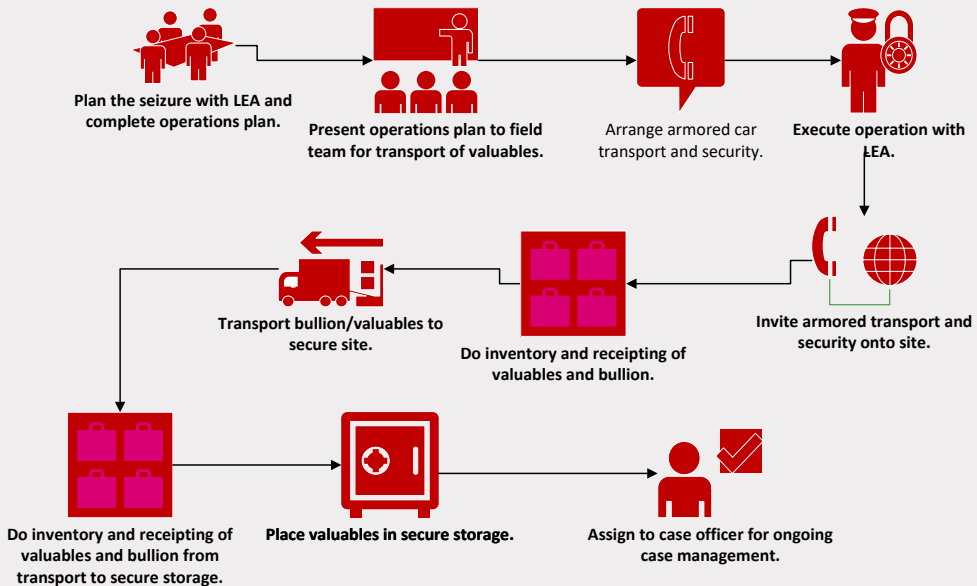
Pre-seizure planning may include identifying a secure armored transport provider and putting it on notice to ensure its availability at the relevant time and place. Such planning is particularly relevant when the pertinent law enforcement agency ceases its involvement in the process and alternative security measures become necessary. Importantly, asset management officers must avoid unduly disclosing to third parties that a law enforcement agency operation is approaching termination. Therefore, it is best to seek clear direction from the law enforcement agency about the security arrangements that will need to be put in place throughout the operation, including by determining what information may be shared with contractors.

On arrival at the seizure location, the asset management office should handle all assets pursuant to its proper office protocols and procedures on-site. At a minimum, items should be identified, receipted, tagged, and reconciled against law enforcement agency exhibits. This process is a key quality and security control for the asset management office, and it should never be rushed. (See figure 6.11.)

Then, when applicable, the asset management office should deploy specialized secure asset transportation (armored car) to take possession of the assets. All items should be transferred and receipted to the company, with directions to a secure location selected by the asset management office. For this type of seizure, assets will typically be stored in a vault or a bank. As a best practice, the armored vehicle should be accompanied by the law enforcement agency and the asset management office during its journey.

At the secure facility, it is best to avoid parking and transferring the assets in plain sight. This step requires appropriate planning with the site (vault) administration to allow for off-street access. Assets are then transferred to the vault by asset management office personnel or appropriately vetted and contracted security contractors only. In a larger operation, it may be advisable to place a team near the vault to provide security cover for this part of the process.

Figure 6.11. Transport and Management of Bullion, Coins, or Gemstones



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

Once secure, the items should be receipted by the receiving site, and the case will be allocated to an asset management officer for ongoing case management and auditing.

6.4 Complex Assets

Complex assets are a category of assets most easily defined by exclusion: they are not simple assets such as real property (for example, land and buildings) and personal property (for example, conveyances, JAACs, physical cash, or simple financial instruments). They require further legal, accounting, and management efforts to ensure effective management and liquidation. Examples of complex assets include operating businesses,

ownership interests, brokerage accounts, intellectual property, intangible assets, domain names, and property granting specific rights (such as liquor licenses, taxi licenses, or commercial fishing licenses). Another type of complex asset that has drawn significant attention in recent years is virtual currency, which includes non-fungible tokens (NFTs).

Because complex assets are so diverse, each type has a unique life cycle and poses its own set of challenges in different jurisdictions. Most complex assets require expert knowledge to analyze and evaluate, and approaches to management should vary on a case-by-case basis considering specific equities, liabilities, and applicable laws and regulations. As a result, managing this type of asset typically requires professional investigators, legal counsel, and hours of accounting. Notwithstanding such challenges, these assets may be extremely valuable. (See box 6.5.)

Therefore, in jurisdictions with sufficient capacity, complex assets are becoming increasingly more common as assets identified for seizure. For example, the US Marshals Service established a dedicated Complex Asset Program to build the skills of staff to facilitate the proper evaluation and disposal of complex assets within specific timelines and performance standards.

Box 6.5. United States: Mismanagement by Asset Management Office

James Galante was a waste management businessman accused of organized crime connections, who pleaded guilty in 2008 to several charges and was sentenced to prison and forfeited his controlling interest in several garbage-related businesses. Galante, however, also accused the government of mismanaging his businesses, taking the case to court, and federal authorities agreed in 2014 to pay US\$3.1 million to settle the dispute.^a

The lessons learned were that the asset forfeiture program needed to have more expertise by hiring additional experts, such as forensic accountants and individuals with knowledge of operating businesses. These experts must be able to understand financial records and financial statements to evaluate complex assets, such as companies.

a See "Connecticut Trash Hauler Pleads Guilty in Mob Case," Associated Press, June 4, 2008, https://www.nytimes.com/2008/06/04/nyregion/04trash.html?_r=1&ref=nyregion&oref=slogin.

6.4.1 Virtual Assets (Cryptocurrency and NFTs)

Cryptocurrency is a virtual currency that uses cryptography to secure and authenticate transactions and to manage and control the creation of new currency units. It is not issued by any government, bank, or company. Instead, it is generated and controlled through computer software operating on a decentralized peer-to-peer network. Most cryptocurrencies have a decentralized ledger (blockchain) where every transaction is recorded and can be traced using open source or subscription analytical tools. However, some cryptocurrencies have been developed on a decentralized network with enhanced transaction privacy and anonymity. This type of network allows users to obscure their transaction history, transferred amounts, and the origin and destination of funds.

NFTs are a type of cryptocurrency; they are an asset that was tokenized via blockchain, which means that each asset was assigned a unique code that conveys property rights to its holder. NFTs can be digital (for example, a photograph) or a tangible item (for example, artwork or real estate). Because the underlying asset was tokenized, individuals can purchase or sell it by merely transferring the unique code to another user via blockchain.

The tool that is used to interact with the blockchain network is called a crypto wallet. Crypto wallets do not store currency, but they generate and maintain the necessary information (including addresses) to receive and send money via blockchain transactions. These are secure tools, requiring a public and private key to enable access and use. There are three major types of crypto wallets: hardware, software, and paper wallets. Each of these types can be further classified as “hot” (hosted on a crypto exchange) or “cold” (kept outside of any crypto platforms).

There are thousands of cryptocurrencies and the environment changes at a rapid pace. When authorities are looking to seize cryptocurrencies, it is important that they seek specialized assistance to value the asset and understand whether and how it can be seized, stored, and ultimately liquidated. In many cases, a private third-party professional will be better placed to store and manage a crypto asset. In any case, the asset management office should implement a robust set of policies specifically addressing the seizure, security, and disposal of cryptocurrency assets, with due consideration to insurance coverage. (See figure 6.12.)

Seizing cryptocurrency typically requires either a court order or the owner’s consent. When the assets are kept in the defendant’s crypto wallet, the asset management office must obtain a warrant and seek the defendant’s cooperation to identify the private key and transfer the funds to a cold wallet created specifically for the seizure. If the defendant does not cooperate, the asset management office must seek the assistance and guidance of a computer forensics expert.

If the cryptocurrency is stored on a locally based exchange, the order should be served on that exchange, and its assistance should be obtained to seize and transfer the cryptocurrency to the wallet controlled by the asset management office. If the exchange is in a foreign jurisdiction, the

asset management office must follow the mutual legal assistance processes to have the order executed in that jurisdiction.

Disposing of cryptocurrencies poses challenges caused by the high volatility in their price. In the United States, disposal of cryptocurrencies typically takes place when the final forfeiture order is obtained. However, the asset management office should seek to engage with defendants because they may agree to an earlier sale. In any event, the asset management office should take due care to implement and follow proper disposal policies, consider risk mitigation measures including insurance coverage, and work with experts to make informed decisions. The sale of virtual assets generally requires compliance with “know your customer (KYC)” or customer due diligence (CDD) standards. The asset management office should ensure that asset managers have the compliance systems in place to meet such standards. If the asset management office is handling sales of cryptocurrency without the use of an intermediary, the office should understand the compliance requirements and associated time and costs of compliance. (See box 6.6.)

6.4.2 Operating Businesses

Operating businesses are private ventures. They can be based in different locations, present various ownership or partnership arrangements, and involve a wide range of activities (such as manufacturing, retail, or wholesale) and sectors (such as agriculture, energy, finance, transportation, or technology). Accordingly, each of these assets is unique, and managing

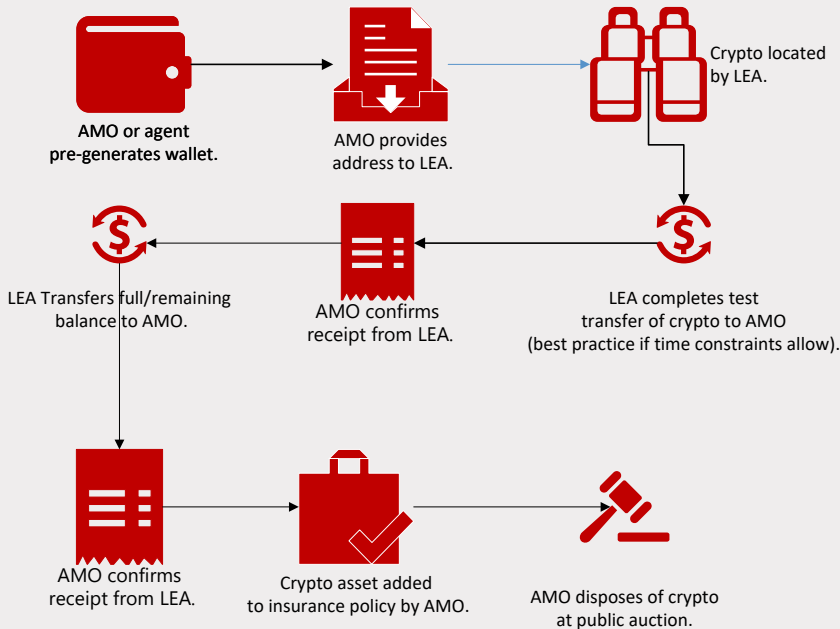
Box 6.6. United States: Managing Cryptocurrency

Two former US federal agents were charged with wire fraud, money laundering, and related offenses for stealing digital currency during their investigation of the Silk Road, an underground black market that allowed users to conduct illegal transactions over the internet.

Both agents were assigned to the Baltimore Silk Road Task Force, which investigated illegal activity in the Silk Road marketplace. During the investigation, one of these agents developed additional online personas and solicited and received digital currency as part of the investigation. The receipt of the funds was not reported, but the currency was transferred to his personal account. The second agent diverted to his personal account more than US\$800,000 in digital currency that he gained control of during the Silk Road investigation.

Both agents subsequently pleaded guilty to charges stemming from actions during the Silk Road investigation. Their sentences were 71 and 78 months' imprisonment.

Source: Reuters, “Ex-Agent in Silk Road Probe Gets More Prison Time for Bitcoin Theft,” <https://www.reuters.com/article/us-usa-cyber-silkroad/ex-agent-in-silk-road-probe-gets-more-prison-time-for-bitcoin-theft-idUSKBN1D804H>.

Figure 6.12. Management of Seized (Restrained) Cryptocurrency

Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

them often requires specific decisions on a case-by-case basis. However, certain general principles apply to the seizure, administration, and disposal of any type of business, as presented here.

Pre-seizure Planning

To determine the viability of seizing and confiscating any commercial operation, the asset management office must assess, at a minimum, the legality, value, and core activity of the business in question. At the beginning of an investigation, this information is typically not readily available. Therefore, as a first step, the asset management office should obtain a restraining order that allows the business to continue its normal operations but places it under the review and monitoring of the asset management office. This approach enables the asset management office to access the company's property, assess the value of business assets, understand the financial position of the company, and meet current business commitments. Importantly, at this early stage, the asset management office should avoid making operational decisions for the company. Instead, the asset management office should focus on ensuring that company assets are not dissipated or further encumbered. The asset management office's restraining order should extend to the company's bank account and include key employees and functions, such as accounting. The asset management

office should seek legal support and advice in this process, because the terms of the restraining order and subsequent forfeiture order may affect the administration, management, and future sale of the business.

During the restraint period, the asset management office can make an informed decision about the business by better understanding its operations and results, as well as future earnings projections (best and worst case). In addition, the asset management office can become more familiar with the relevant line of business and assess whether seizure is advisable. Although some businesses may be legal and legitimate, they may not be suitable for government operation, such as adult entertainment venues or gun stores. By contrast, the government may have an interest in taking over other types of business, for example, when continuity of services is important to the local community.

If the business is running at a loss, the asset management office can take the necessary steps to mitigate it. Losses can accrue for various reasons, including the departure of key staff. Depending on the circumstances, closing the business may be the most effective measure to preserve value.

The process of assessing the viability of a business typically takes a minimum of 30 days, with more complex operations often requiring even longer. Maintaining the value of a business can be challenging, and it requires a multidisciplinary approach. To bridge any gaps in expertise, the asset management office should always consider involving specialized professionals as part of its team. Depending on the type of operation, the asset management office should also consider limiting forfeiture to certain assets or separate parts of the business. This choice may be advisable, for example, in service-oriented industries, where the business's value is often tied to the defendant's personal skills and goodwill.

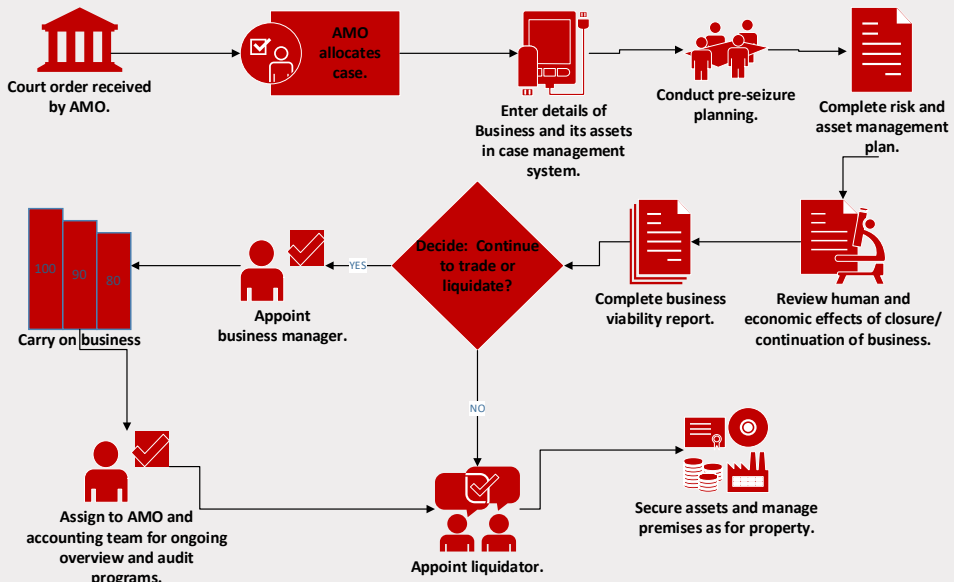
Involving the asset management office in any business requires thorough and careful planning. The initiating law enforcement agency should communicate with the asset management office before seeking any order over a business to ensure that appropriate resources can be allocated at an early stage of the seizure. (See figure 6.13.)

Initial Inspection

To ensure a thorough inspection of the business, the asset management office should create a form that outlines the factors to be considered. Appendix E is a sample of a field report form

If the business targeted for seizure is currently engaged in trading or has been trading recently, the asset management office should promptly inform and involve financial specialists and other experts to develop a business seizure action plan.

While the asset management office is carrying out the order to restrain or seize, authorities must control the scene, which is a crucial step to ensure the safety of attending staff and prevent the removal or concealment of any assets. In pre-seizure planning, the asset management office should consider whether additional assistance may be required to gain access and secure the premises. The extent of these needs will depend

Figure 6.13. Management of a Seized Business Process

Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

on the terms of the restraining or seizure order. The asset management office should conduct a thorough examination of the premises on entry and record all actions, including by video or photograph where appropriate. Interactions with secured creditors often raise issues and should also be properly documented.

Viability Assessment

Before taking any action in a trading business, the asset management office must ensure that the business is viable without breaking any laws. Continuing to trade an insolvent business, for example, may be in breach of insolvency laws. Additionally, the asset management office must confirm that there are no secured creditors or security interest holders who would prefer to deal with their interest in another way, such as a receivership or liquidation. If the business is a partnership, there may be partners who have legitimate claims to the business and can continue to operate it profitably.

The asset management office should also seek guidance from a court on whether to continue operating the business for a period to later sell it as a going concern, sell it immediately as a trading business, or close it and go through a liquidation process. With the assistance of experts, the asset management office should provide the court with a comprehensive factual report and viability assessment of the business in question. This report should include an estimation of the current situation and a valuation of the

assets, as well as an assessment of creditor details. Additionally, a full review of all available financial records for the business should be conducted. Other relevant factors, such as the importance of the business to the local economy and the likelihood of the business reviving with appropriate management to preserve or improve its value, should also be considered. The potential loss of jobs and the negative effect on the local economy must be weighed against, for example, the effects that continuing the operation of an insolvent trading business will have on other businesses in the region.

In addition to the asset management office, courts will also hear from other interested parties before deciding. For example, law enforcement agencies may oppose the continuation of a business that is funded by criminal activity or used to finance terrorism.

Closing a Seized Business

Any decision to close the business should involve consultation with the law enforcement agency and prosecutors and be directed by the court. Closing a seized business may result in labor unrest because of the loss of employment, or community unrest if the business provided a valued service, such as a supermarket in an underserved area. The asset management office should ensure compliance with all appropriate labor and insolvency laws before liquidation, as well as the possible reputational issues raised. Box 6.7 is an example of continuity that was retained.

In certain cases, it is preferable to close the operations and handle any assets and liabilities separately. However, if a business is solely used for illegal activities and its stock is considered tainted property, it may be more

practical for the law enforcement agency or asset management office to apply for asset restraint instead.

Typically, the court expects the asset management office to recommend a course of action.

Box 6.7. United States: Ensuring Continuity of Operations for an Important Community Business

A grocery store in a US territory in the Caribbean was being used by a criminal organization to launder money. As it was, the business was not sustainable, but it was the only store on that island, so it was obviously not in the best interest of the community for it to shut down. In that case, the government took over temporarily, knowing that there would be a price low enough for some investor to acquire it and ensure the community did not lose its only store.

Source: T J Abernathy.

Carrying on a Seized Business

If the court determines that a business is legal and viable and must continue to operate, the asset management office must obtain proper legal documentation to manage it. These requirements can include tax registration, licenses, and indemnification. In addition, this course of action will likely require the asset management office to assume additional contractual obligations, for example, with trade creditors, employees, and landlords. The asset management office should assess this potential exposure at the beginning of the restraint period, because terminating those obligations

later may prove costly. The asset management office should seek expert advice throughout the process and delegate the direct administration of the business to a third party, while maintaining a management, accounting, and legal overview of the operation.

During the operation of the business, the asset management office is typically subject to complex reporting requirements relating to all concerned parties. Therefore, reporting timelines, format, and content will need to be agreed upon. It is important to maintain expert advice throughout the process to ensure compliance with all legal and regulatory requirements.

Social Reuse

In some jurisdictions, “social reuse”³ is employed for seized and confiscated assets in certain circumstances. (See chapter 5, section 5.4, for a detailed discussion on social reuse.) This action may involve the early sale of a business to preserve its value and keep it in the hands of the business community, rather than the asset management office, whose primary purpose is stability and preservation, not profit. In such cases, the asset management office may need to expend significant resources to ensure that the business can be made viable, and funding must be confirmed before embarking on any business preservation project.

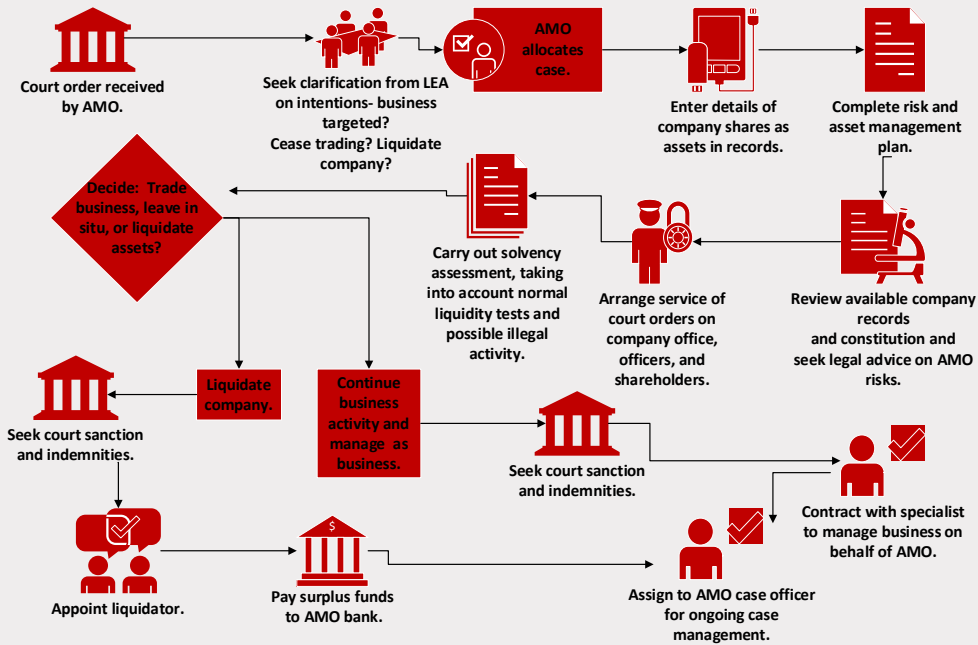
6.4.3 Privately Held Company Shares

In some cases, the law enforcement agency or prosecutor may request the court or other authority to restrain an individual's shares in private companies. These shares can be considered assets themselves, but they can also be used to determine the assets owned by the company in question. Unlike publicly listed shares, these private shares are not tradable and establishing the company value can be a complex process because there is no public market to establish the price. A range of factors can go into establishing the company value, such as its projected earnings, value of similar businesses, and value of assets, as well as the quality of the management team. It is important to consult with a professional, such as a business valuation expert or an accountant, to determine the value of a private company. The disposal of private shares is typically covered in the constitution or bylaws of the company.

When seeking an order to restrain or confiscate private company shares, the asset management office should consider the company registration information and ensure that the transfer is correctly documented. Generally, court orders should be served on the company's directors, shareholders, or other officers of the company and entered on the company share registers to give notice to all interested parties. (See figure 6.14.)

In some instances, the purpose of seizing private company shares is to gain control of the company's business and assets. In such cases, the law enforcement agency should conduct adequate pre-seizure planning to ensure that this purpose is clear to all parties and that the asset management office has the proper avenues and authorizations to secure custody and control of the business.

Figure 6.14. Management of Seized, Privately Held Company Shares



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

The asset management office should seek access to the company’s financial information to fully understand the nature of the business and its potential worth. This information can often be obtained through the company’s financial accounts and cooperating employees.

Private companies that are subject to seizure proceedings are often set up to create a front for criminal enterprises and money laundering.

Therefore, before making any management and disposal decisions, the law enforcement agency and asset management office should assess whether the company is engaged in any illegal activity. In certain cases, a company may not be worth seizing because its value without the illegal activity is negligible.

“If you feed it,
don't seize it.”

6.4.4 Seizure of Animals and Livestock

A guiding principle of asset management is to avoid seizing any living beings, such as livestock, exotic animals, or other creatures. Because living beings require specialized care and maintenance, they tend to depreciate quickly, and they rarely generate any income. However, in exceptional circumstances, the asset management office may be directed to seize and manage this type of asset.

In such cases, the pre-seizure planning stage needs to carefully assess the asset management office’s ability to provide the animals with due care for the duration of any proceedings. If there is any doubt about the ongoing welfare of the animals, the asset management office should be extremely cautious in deciding to take on such responsibilities. (See box 6.8.)

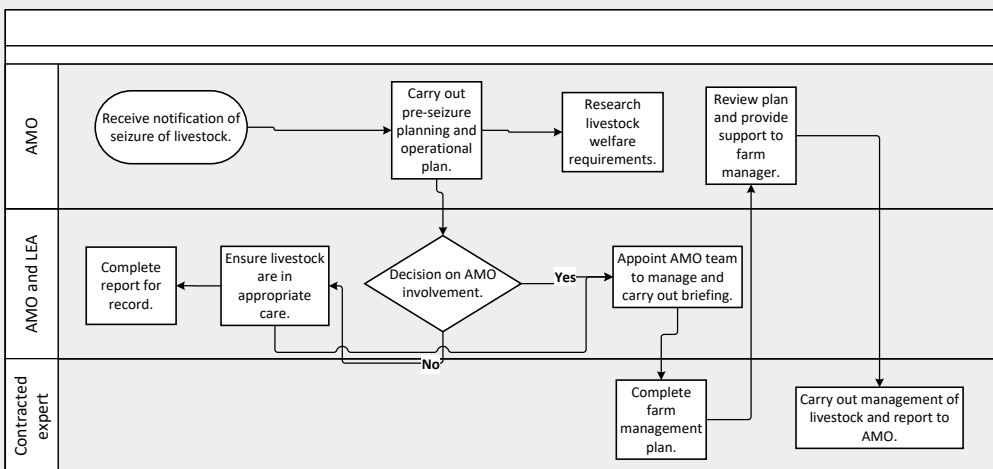
The initial step in the pre-seizure planning is to physically inspect the animals with the assistance of a farm manager or the owners of the livestock. Veterinary support should be considered so that animal husbandry records

Box 6.8. United States: Seizure of Horses

Rita Crundwell had been comptroller of the city of Dixon, in the state of Illinois. Crundwell was convicted of stealing more than US\$53 million from the town and was sentenced to 19 years and 7 months in prison. Crundwell had used the money she stole to, among other things, build and support an American quarter horse breeding operation. These horses—among many other assets—were seized, forfeited, and eventually auctioned for US\$4.8 million. Caring for the horses, however, had cost the US Marshals Service US\$1.5 million. The net proceeds from the auction, therefore, were significantly lower than the auction receipts. One of the horses was sold for US\$775,000.^a

a See “Former Dixon Comptroller Rita Crundwell Sentenced to Nearly 20 Years in Federal Prison for \$58.7 Million Theft from City,” press release, February 14, 2013, US Attorney’s Office, Northern District of Illinois, <https://www.justice.gov/usao-ndil/pr/former-dixon-comptroller-rita-crundwell-sentenced-nearly-20-years-federal-prison-537>.

Figure 6.15. Seizure of Livestock Not Involving a Business



Source: Guy Sayers. Note: AMO = asset management office; LEA = law enforcement agency.

can be inspected and verified at an appropriate expert level.

Before relocating any animals, the asset management office should seek expert advice to ensure full compliance with all statutory requirements and restrictions on the movement of livestock. If the animals are left in situ or in the custody of owners or land tenants, the asset management office should engage an expert to conduct regular inspections and to ensure their welfare. (See figure 6.15.)

The asset management office should also seek specialized support if the livestock is to be managed under a business, such as an operating farm. A competent person or expert should complete an animal welfare and husbandry plan, coupled with a process for managing a business. (See box 6.9.) Operating a farm is a complex endeavor and it requires considerable resources to ensure good management of the farm and its workers, and proper care of the animals. To offset these management costs, the asset management office may deduct costs as business expenses under a court order or obtain additional funds by selling other restrained assets.

Box 6.9. Honduras: Seizure of Zoo and Hotel

In 2014, Honduras's Office of Seized Assets seized the Joya Grande zoo and hotel from a criminal organization.

Pre-seizure planning seeks to assess the business and all the risks involved. The primary task upon seizure was to identify the personnel involved in criminal activities and thereby avoid major disruptions of the operations and unnecessary dismissals of experienced staff, which could pose concerns for the caring of the animals.

Subsequently, it was established that US\$42,000 per month was needed to keep the zoo operating (including employee salaries, animal food, and utilities).^a

Because the zoo had been controlled by a criminal organization, registry and licenses were nonexistent and some of the activities undertaken by the company were unlawful.

Nevertheless, it was decided not to interrupt the business and to ensure that the zoo could continue its operation. It was closed for only 12 hours and then quickly reopened.

After the assessment phase, a trustee was appointed, and the income became regular. A bridging loan was used to cover the costs and was paid back very quickly, given the positive income.

The place remained a domestic tourist attraction, and the value of the whole resort—consisting of the hotel, swimming pool, and zoo with rare animals—increased.

The agency in charge of administration and management jointly cooperated with local municipalities in infrastructure projects, and efforts were in place to guarantee coordination among police, administrators, and the judiciary, as well as at the international level.

a See "Honduras Zoo Struggles to Replace the Drug Money That Built It," Yahoo News, October 6, 2018, <https://sg.news.yahoo.com/honduras-zoo-struggles-replace-drug-money-built-014049288.html#>.

6.4.5 Perishable Goods

Perishable goods are often seized during investigations, and the asset management office may be asked to advise on their disposal. In such cases, the type of asset will determine the appropriate steps to be followed. It may be helpful for the asset management office to consult with external experts, such as auctioneers, who can assist law enforcement in this process.

If the asset management office becomes involved earlier in the process, pre-seizure planning should balance the need for law enforcement action against other considerations, including the type and quantity of goods, the potential impact on public health and safety, and foreseeable economic consequences on the defendant or the community.

At this stage, the asset management office should consider excluding these assets from the confiscation order, or exploring alternative measures that allow for the orderly disposal of assets with controls placed over the receiving funds.

If the goods must be relocated, depending on the quantity, the asset management office may face an immediate storage problem. Perishable goods often require specific environmental conditions to ensure a longer life span, and the mere fact of moving them may cause severe damage. If the goods are meant for consumption, improper management and storage may also lead to contamination and harm to their end users.

References

OECD (Organisation for Economic Co-operation and Development). 2018. "Assessment and Review of Asset Recovery Institutional Arrangements in Greece." Greece-OECD Project: Technical Support on Anti-Corruption, p. 21. <https://search.oecd.org/daf/anti-bribery/OECD-Greece-Asset-Recovery-Institutional-Analysis-ENG.pdf>.

Notes

- 1 For more information on this auction, see “US Marshals Host Live Auction in Round Rock of Items Seized from High-Profile Cases, Leslie Adami, KVUE News, Austin, Texas. <https://www.kvue.com/article/news/local/us-marshals-host-live-auction-in-round-rock-of-items-seized-from-high-profile-cases/269-580014001>.
- 2 As the glove remained outside of the United States, an additional US\$1 million was added to the settlement to compensate for the value of the glove and other memorabilia. <https://abcnews.go.com/International/smooth-settlement-son-african-dictator-surrender-30m-assets/story?id=26163323>.
- 3 “Social reuse is particularly relevant to jurisdictions where criminal groups have become so entrenched in communities that law enforcement action against them is met with hostility, if not active resistance. This is often the case in communities where criminal elements, like the mafia in Italy, have significantly undermined the rule of law and confidence in law enforcement. Social reuse initiatives are aimed at making the confiscated property available to the affected communities in an effort to restore compliance with and confidence in the law.” From United Nations Office on Drugs and Crime (UNODC), “Effective Management and Disposal of Seized and Confiscated Assets,” 2017, p. 41.

Appendix A. Asset Management Office Operations Plan

ASSET MANAGEMENT OFFICE OPERATIONS PLAN

Operation [name]

[Date]

1. BACKGROUND

1.1. The Asset Management Office (AMO) was advised of **Operation [name]** by [name and rank, if applicable] of the [LEA (law enforcement agency) name] on [date]. The [LEA name] investigation is due to terminate on [day, date, and time].

1.2. Predicate offending of defendants:

- [List]

2. DEFENDANTS & INTERESTED PARTIES

Defendant Name	Address
[First defendant]	
[Second defendant]	
[Third defendant]	[Include registered office and type of business, e.g., "x Limited, Chartered Accountants"]

Interested Party Name	Address
[Interested party]	
[Interested party]	
[Interested party]	[Include registered office and type of business, e.g., "x Limited, Chartered Accountants"]

The principal operation targets are [first respondent] and [interested party]. The predicate offending is **MONEY LAUNDERING [or other]**.

[Identify if there are any gang affiliations or associations.]

3. ASSETS TO BE RESTRAINED

There are numerous properties, vehicles, bank accounts, and registered companies to be restrained in this matter, including residential properties in [other jurisdictions].

Refer to Annex A in this appendix for a full list of restrained assets.

4. MISSION

- 4.1. The AMO is to take custody and control of restrained assets as specified in sealed court orders and warrants.

5. LEGAL AUTHORITY

- 5.1. [Describe orders or other written authority. Include sections of legislation.]
- 5.2. [Warrants to be executed and sections under which they were given]

6. EXECUTION

6.1. GENERAL OUTLINE

The [LEA name] is terminating this operation on [day, date, time]. AMO staff will be required to document and secure assets pursuant to court orders and deal with the assets in the following manner:

- Assisting and allowing LEA to carry out its operational priorities
- Assisting LEA with identifying and valuing assets if requested
- Securing the assets
- Preserving the assets and their value
- Documenting the condition of the assets for insurance purposes and future management.

6.2. LEA TERMINATION BRIEFING & EXECUTION OF WARRANTS

Date:

Time:

Location:

Warrants: [If other warrants such as search warrants are to be executed at other times]

[Either: "By prior arrangement with the LEA Officer in Charge (O/C), there is no requirement for AMO staff to attend this briefing or to be present when the warrants are executed. The LEA is to secure the criminal

scenes first and, having done this, will make the scenes available to the AMO to recover restrained assets and complete initial inspections and appraisals.”

Or: “The AMO manager and AMO case office will attend the LEA briefing to present the AMO operational plan to the LEA team.”]

6.3. AMO BRIEFING & DEPLOYMENT

Date:

Time:

Location:

Date:

Time:

Location:

On the day of termination, AMO staff and agents will depart [place] to arrive in [place], meet for a final team brief, and then depart for their first tasking.

6.4. RISK ASSESSMENT

This operation is assessed as **LOW RISK/MEDIUM RISK/HIGH RISK** for AMO staff.

There is always an element of risk in all operations, and because of this, AMO staff and agents should maintain situational awareness while in the field and assess and reassess the situation as it presents, commensurate to the operation mission and objectives.

Staff will always work in teams and use allocated communication equipment. Arrival at and departure from all subject sites will be communicated to the AMO communication center.

The AMO team leader is also to be advised where there is any departure by staff from the initial operation parameters.

Staff members will not enter any subject site until they have first liaised with the LEA O/C of the site.

Staff members will always have with them all AMO operational appointments and wear personal protective equipment (PPE), including stab-resistant or bullet-proof vests and body-worn cameras as appropriate.

6.5. **RISK MITIGATION**

RISK MATRIX					
Impact	Likelihood				
	Rare	Unlikely	Possible	Likely	Almost certain
Severe	Moderate	High	High	Very high	Very high
Major	Moderate	Moderate	High	High	Very high
Moderate	Low	Moderate	Moderate	Moderate	High
Minor	Very Low	Low	Low	Moderate	Moderate
Insignificant	Very Low	Very Low	Low	Low	Moderate

Note: The following risks are known to pose serious harm or have fatal consequences. This list can be added to with mitigation strategies.

Risk	Risk rating	How will you mitigate the risks?
Driving—operational deployment	[Indicate from above risk matrix]	<ul style="list-style-type: none"> • AMO staff will follow the AMO driving policy. • All staff are licensed drivers and have had advanced driver training. • All vehicles are equipped with GPS and radios. • It is anticipated that most driving will be during daylight hours.
Chemical—drug contamination	[Indicate from above risk matrix]	<ul style="list-style-type: none"> • AMO staff will treat all assets on the basis that they may be contaminated by environment or chemicals. • Physical handling of assets will be minimized. • PPE, including gloves and masks, will be worn as appropriate. • Staff will not enter any known or suspected drug or other lab sites.
Person—violence and aggressive behavior	[Indicate from above risk matrix]	<ul style="list-style-type: none"> • AMO staff will always work in teams and use communication equipment. • Staff will not enter any site until instructed to do so by the LEA officer in charge of the site. • Staff will not enter any site without LEA assistance. Police will remain on site for the duration. • PPE, including stab-resistant or bullet-proof vests and body cameras, will always be worn.

6.6. STAFF DEPLOYMENT—AMO

Team 1

-
- Vehicle registration: phone:

Team 2

-
- Vehicle registration: phone:

Team 3

-
- Vehicle registration: phone:

Team 4 (Support—AMO HQ based)

- phone: (AMO team leader & comms)
- phone: (AMO case officer)

6.7. SERVICE PROVIDERS

Towing transport

- phone:
- phone:

Asset transport

- phone:
- phone:

Vehicle valuation

- phone:
- phone:

Property valuations

- phone:
- phone:

6.8. ASSET HANDLING

Team 1, as directed, will be responsible for taking restrained assets into AMO custody and control, completing initial inspections of the restrained assets, completing valuations where required, completing property initial inspection reports, and liaising with the transport coordinator, [name], for the uplift and movement of vehicles.

Team 2, as directed, will be responsible for taking restrained assets into AMO custody and control, completing initial inspections of the restrained assets, completing valuations where required, completing

property initial inspection reports, and liaising with the transport coordinator, [name], for the uplift and movement of vehicles.

Team 3 will be responsible for taking restrained assets into AMO custody and control as they relate to the restrained companies, completing initial inspections of the assets, completing valuations where required, completing property initial inspection reports, and liaising with the transport coordinator, [name], for the uplift and movement of vehicles where necessary.

Property valuations

A valuation of restrained properties will be completed during the termination by the local agent. AMO staff are to liaise and confirm the valuer's attendance at requested sites.

Other assets

The LEA will be asked to report any additional assets that it intends to seize and that are not listed in the restraining orders. Any assets (such as jewelry) handed over to the AMO during termination will be receipted (by way of a field receipt), allocated an AMO asset identifier, and photographed.

7. LOGISTICS & ADMINISTRATION

7.1. TRANSPORT

Team 1:

Team 2:

Team 3:

7.2. MEDIA PLAN

There will be **no contact with the media** by staff in the field. Staff are to actively avoid media cameras if possible and follow the AMO media guidelines. Media queries should be directed to [LEA officer name and rank, if appropriate].

7.3. AMO COMMUNICATIONS

[Include arrangements for radio communications, cell phone group calls, or other.]

AMO officer, agent, and vehicle radio identifiers (if radio comms are being used)					
AMO officers	Initials	Name	Mobile	Radio frequency provider	Cell phone group call number/reference
AMO1					
AMO2					
AMO3					
AMO agents					
AMA1					

7.4. **ASSET CASE ADMINISTRATION**

Case number:

Case officer:

Reviewed by:

Author	
Name:	
Position:	Asset Management Officer
Signed:	
Date:	
Approver	
Name:	
Position:	AMO Team Leader/Manager
Signed:	
Date:	

ANNEX A**LIST OF ASSETS TO BE RESTRAINED****Business Entity**

Asset #	Description	Location

Properties

Asset #	Type	Location (domestic)

Asset #	Type	Location (foreign)

Motor Vehicles

Asset #	Description	Location
	Motor vehicle	
	Trailer	

Bank Accounts

Asset #	Account type	(Bank name/sort code) Account Number	Notified Balance
	Current		
	Savings		
	Term deposit		

Cash

Asset #	Description	Location
	Cash sums	To be confirmed on day

Appendix B. New Asset Case Notification Form

NEW ASSET CASE NOTIFICATION FORM

To Be Sent by Law Enforcement Agency (LEA) / Prosecuting Authority

Agency Information			
Agency Name		Address	
Case Officer	Telephone	Email	Mobile
Exhibit Officer	Telephone	Email	Mobile
Prosecutor	Telephone	Email	Mobile
Defendant Information			
Defendant 1	Address	Date of Birth	Phone/Email
Defendant 2	Address	Date of Birth	Phone/Email
Defendant 3	Address	Date of Birth	Phone/Email
Seizure Authority Information			
Restraining Order <input type="checkbox"/>	Forfeiture Order <input type="checkbox"/>	Seizure Warrant <input type="checkbox"/>	
(Attach)	(Attach)	(Attach)	
Served by:	Served on:	Date Served:	

Asset Information (identifying information for each asset must be attached)		
Cash <input type="checkbox"/>	Financial/Bank Accounts <input type="checkbox"/>	Vehicles <input type="checkbox"/>
Real Estate <input type="checkbox"/>	Marine Vessels <input type="checkbox"/>	Aircraft <input type="checkbox"/>
Jewelry <input type="checkbox"/>	Precious Metal <input type="checkbox"/>	Virtual Assets <input type="checkbox"/>
Business <input type="checkbox"/>	Livestock <input type="checkbox"/>	Other Property <input type="checkbox"/>
Forward this completed form with supporting documentation (property titles, motor vehicle descriptions, evidence sheets, etc.)		
To: Asset Management Office	By: (Name)	Date: ____/____/____

Appendix C. Property Inspection Report

INITIAL PROPERTY INSPECTION AND INSTRUCTION REPORT (A)

Report A to be used if subject to Hazard Management Plan. Otherwise use report B.

Please complete the initial asset inspection of the property described below pursuant to an order of the court/authority to act dated [enter date]. (Copy of order/authority attached.)

I confirm that the property is to be managed in terms of the Hazard Management Plan attached relating to contaminated sites. Specific instructions are as follows:

1. Photograph the exterior of buildings only.
2. Make contact with appropriate compliance officers in regard to signage to warn of hazard. Ensure property is secured as much as possible.
3. Complete assessment on possible use of security firm to assist with above.

Case name:	
Defendant name:	
Address:	
LEA contact:	
Phone:	
Contamination risk	Yes/No
Comments:	
Signed:	
Dated:	

Note: LEA = law enforcement agency.

AMO INITIAL PROPERTY INSPECTION REPORT (B)

To be completed by field staff (AMO staff or agents) and forwarded to AMO within 24 hours of completion of inspection together with photos saved to device or USB stick.

Case name:	
AMO reference #:	
Property registered owner:	
Property occupier name:	
Contact details:	
Property physical address:	
Physical description of property (land):	
Digital photos taken:	Yes/No
Tenant cooperation:	Yes/No Comment:
General condition:	
General description of improvements (residence and other buildings):	
Types of repairs required:	
Current property use:	
Any known risk issues:	
General comments:	
Inspected by:	
AMO staff names:	
Police and contact details:	
Date of inspection:	
Signed:	Date:

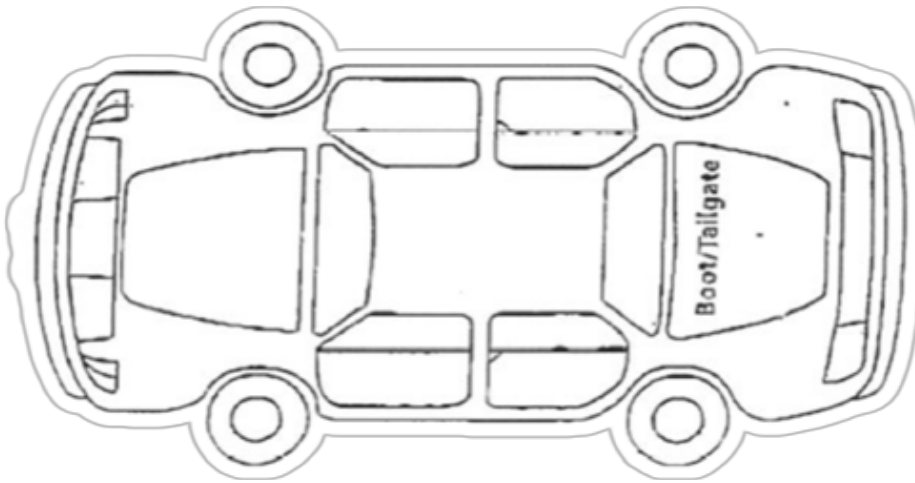
Appendix D. Vehicle Inspection Report

AMO Initial Vehicle Inspection Sheet

AMO case number			
AMO asset reference number			
Physical address where located			
Registered owner's name			
Other interested parties		Finance company / co-owners / beneficial owner	
Make:		Model:	
Year:		Registration no.:	
VIN:		Chassis no.:	
Color:		Odometer reading:	
WoF / safety inspection expiration date:		Registration expiration date:	
Keys / number	Yes/No	No.:	Digital photos taken
			Yes/No
Field receipt issued	Yes/No	Field receipt no.:	
Insurance cover	Yes/No	Insurance cover	Comprehensive
Insurer name			Third party
			Other (specify):
Personal items located			
General vehicle condition			
Special storage requirements			
Known risk issues			
Vehicle inspected by (name / agency)			
Date inspected			
LEA contact details:			
AMO staff names:			
Signed / dated	____/____/____		

Note: AMO = asset management office; LEA = law enforcement agency; VIN = vehicle identification number; WoF = warrant of fitness.

Indicate on diagram damage/scratches to vehicle:



Appendix E. Field Report on Seized Business

FIELD REPORT ON SEIZED BUSINESS

AMO Reference:	Date:
Case Reference:	
Name of Defendant Person/Company:	
Trading Name:	
Address of Business:	
Name of Manager:	
Name of Solicitor:	
Name of Accountant:	

1. CASH IN HAND

a. Cash Totals:	
b. Detailed Checks:	YES/NO
Check Descriptions at Folio No.:	
c. Field Receipt No.:	Issued:
d. Detailed Trust/Agency Monies Held:	YES/NO
Folio No.:	

2. BANK ACCOUNTS

..... Bank Branch

a. Verbal Request to Close Account:	YES/NO
b. Collected Checkbook:	YES/NO
c. Collected Internet Banking Information:	YES/NO

3. STOCK

a. Inventory Taken: YES/NO

b. Perishable Stock Sold to:

Name:

Address:

Phone:

Email:

c. Field Receipt No.: Issued:

d. Insurance Arranged: YES/NO

e. Storage Arranged: YES/NO

f. Cancelled Orders Not Received: YES/NO

Provide Details:

4. PLANT & EQUIPMENT

a. Inventory Taken: YES/NO

Folio No.:

b. Storage Arranged: YES/NO

Provide Details:

c. Insurance Arranged: YES/NO

5. MOTOR VEHICLES

Registration No.:

(i)

(ii)

(iii)

a. Garaged at:

b. Collected Keys: YES/NO

c. Arranged Storage: YES/NO

d. Insurance Arranged: YES/NO

6. MAIL COLLECTION / PHONE / POWER	
PO Box No.:	Phone No.: Fax No.:
Web Address: Email Address:	
a. Cancel/Continue Phone:	
b. Read Meters Registration No.:	

7. CONTRACTS	
a. Obtained Copy of Contracts:	YES/NO
b. Ascertained Value of Work Completed: \$	
c. Funds Available for Payment of Wages:	YES/NO
d. Obtained Payment for Work Done:	YES/NO
e. Obtained Written Undertaking to Pay Balance Contract Price:	YES/NO
f. Obtained Guarantee to Pay Wages (if cash is not available):	YES/NO
g. Cancel or Continue Contracts.....	
.....	
h. Arranged Supervision:	YES/NO
i. Arranged Insurances:	
(i) Employer's Liability:	YES/NO
(ii) Public Liability:	YES/NO
(iii) Fire and Burglary:	YES/NO

8. ADVERTISING
(Provide details of whom contracts are with)

9. MAGAZINE / NEWSPAPER SUBSCRIPTIONS
(Provide details of subscriptions and supplier organizations)

10. BUSINESS BOOKS AND RECORDS

a. Collect Books and Records:

- (i) Check Stubs: YES/NO
- (ii) Bank Statements: YES/NO
- (iii) Bank Deposit Books: YES/NO
- (iv) Receipt Books: YES/NO
- (v) Wage Books: YES/NO
- (vi) Cash Books: YES/NO
- (vii) Journals: YES/NO
- (viii) Debtors Ledger: YES/NO
- (ix) Assets Register: YES/NO
- (x) Share Register: YES/NO
- (xi) Financial Statements: YES/NO
- (xii) Correspondence Files: YES/NO
- (xiii) Creditors' Invoices and Statements: YES/NO
- b. Collected List of Creditors: YES/NO
- c. Collected Minute Book: YES/NO
- d. Collected Unused Stationery: YES/NO

11. TENANCY OF PREMISES

- a. Address:
- b. Landlord:
Name:
Address:
Phone:
Email:
- c. Solicitors for Landlord:
- d. Collected Copy of Lease: YES/NO
 - (i) Term:Years
 - (ii) From: to
 - (iii) Right of Renewal: YES/NO
 - (iv) Rental: \$..... per
- e. Rental Paid to:
- f. Amount in Arrears: \$.....

12. SECURITY OF PREMISES

a. Keys Collected:	YES/NO
b. Other Keys Held by:	
c. Locks Changed:	YES/NO
d. Insurance Arranged:	YES/NO
e. Surveillance Arranged:	YES/NO

Inspected by AMO Staff and Agents:

Names:
.....

LEA Name and Contact Details:

Date and Time of Inspection:

Managing Seized and Confiscated Assets: A Guide for Practitioners

Asset recovery seeks to deprive corrupt individuals from benefiting from their crimes, deter future corruption, and return stolen assets to their rightful owners or compensate victims of corruption, including the state.

Since 2010, close to US\$10 billion in corruption proceeds have been frozen, restrained, confiscated in a destination country, or returned to a country that was harmed by corruption. However, without effective management of the seized and confiscated assets, there may be little to show for these efforts. Although corrupt officials may have been deprived of the benefit of the stolen assets, diminished or negligible value from the disposal of confiscated stolen assets deprives society once again of the assets' productive use.

This Guide continues the evolution of the fight against corruption with a focus on preserving the value of seized assets and maximizing the value at disposal of confiscated assets. The management of seized assets is a challenge, as they may lose value from the moment of seizure until their disposal following the final confiscation decision. Through effective management, confiscated assets can be used to benefit national country budgets, compensate victims, or be repurposed for social causes.

This Guide aims to provide guidance to practitioners on asset management, from pre-seizure planning to preserving value during custody to maximizing value at disposal. It is intended to provide practitioners with the foundations to build an effective asset management function and to grow the asset portfolio to manage complex assets. Accordingly, the Guide includes recommendations and good practices derived from international studies, experience from interviews with asset management experts, and case examples. In addition, practitioners may benefit from discussions of different approaches among jurisdictions, the case examples, and the detail on managing specific asset types.



Stolen Asset Recovery Initiative

The World Bank • UNODC

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